

86, June 9

# STATE REGISTER

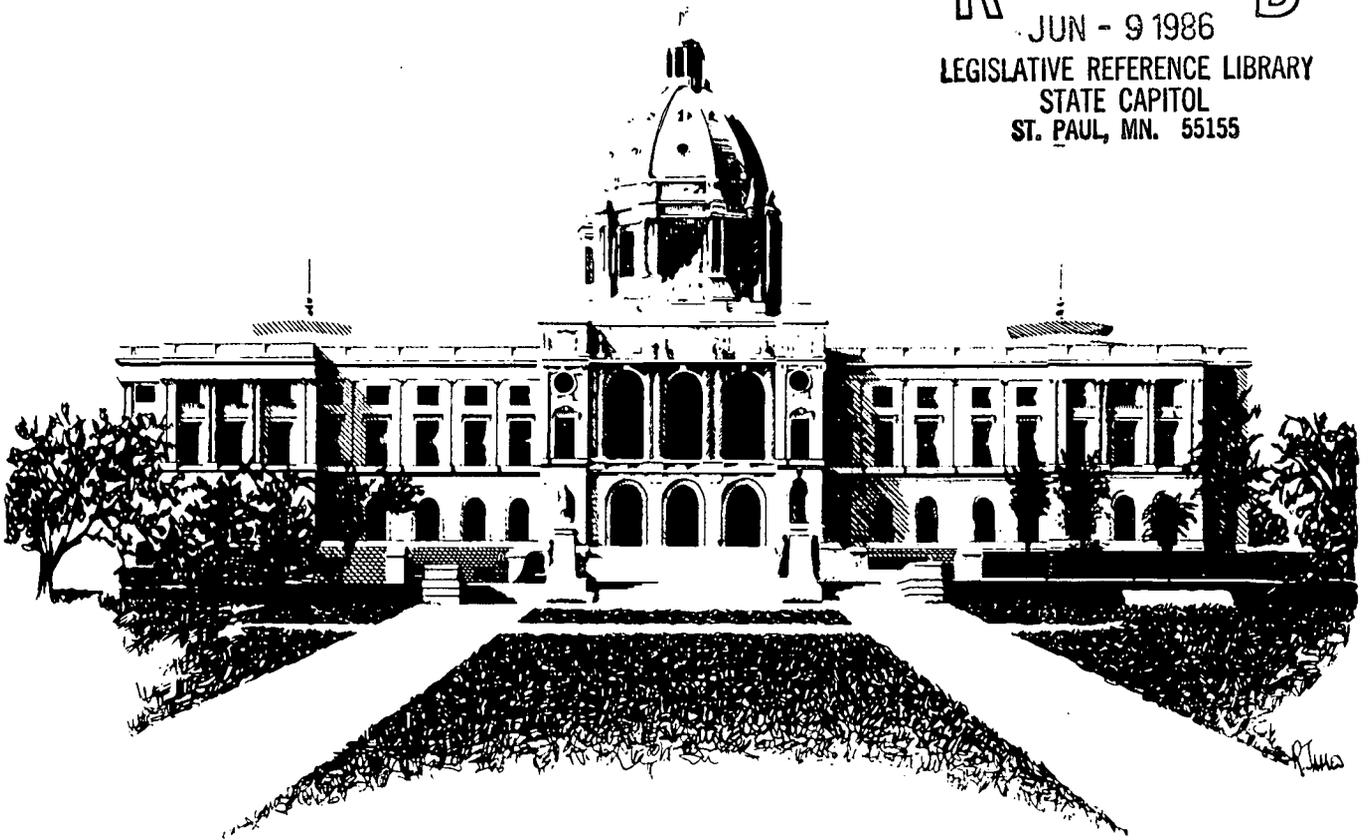
STATE OF MINNESOTA

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VOLUME 10, NUMBER 50

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# STATE REGISTER

## Volume 10

### Printing Schedule

#### Submission Deadlines

Vol. 10 Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
50	Friday 23 May	Monday 2 June	Monday 9 June
51	Monday 2 June	Monday 9 June	Monday 16 June
52	Monday 7 June	Monday 16 June	Monday 23 June
53	Monday 16 June	Monday 23 June	Monday 30 June

\*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

\*\*Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

**Governor:** Rudy Perpich

**Director, Minnesota Documents  
Division:** Stephen A. Ordahl

**Editorial Staff:** Paul Hoffman,  
Ruth Werness

**Commissioner, Department of  
Administration:** Sandra J. Hale

**Editor:** Robin PanLener

**Circulation Manager:** Debbie Kobold

**Support Staff:** Bonnie Karels

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**This Week**—weekly interim bulletin of the House.

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The PROPOSED RULES section contains:

- Calendar of public hearings on proposed rules.
• Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
• Proposed amendments to rules already in existence in the Minnesota Rules.
• Proposed emergency rules.
• Withdrawal of proposed rules (option; not required).

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the State Register unless an agency requests this.)
• Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
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The OFFICIAL NOTICES section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
• Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register and filed with the Secretary of State before April 8, 1985 are published in the Minnesota Rules 1985. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after April 8, 1985 will be included in a supplement scheduled for publication in Spring, 1986. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the State Register but are generally not published in the Minnesota Rules due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The State Register publishes partial and cumulative listings of rule in the MINNESOTA RULES AMENDMENTS AND ADDITIONS list on the following schedule:

Table with 2 columns: Issue numbers and cumulative listings. Includes: Issues 1-13, inclusive; Issues 14-25, inclusive; Issue 26, cumulative for 1-26; Issues 27-38, inclusive; Issue 39, cumulative for 1-39; Issues 40-51, inclusive; Issue 52, cumulative for 1-52.

The listings are arranged in the same order as the table of contents of the Minnesota Rules 1985.

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# PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Office of Administrative Hearings

### Proposed Rule Relating to Awards of Expenses and Fees in Contested Cases

Notice is hereby given that the Minnesota Office of Administrative Hearings ("Office") proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority for the Office to adopt rules generally is at Minnesota Statutes, section 14.51 and specific authority for this rule is also at Laws of Minnesota 1986, Chapter 377, section 4.

Persons interested in this rule shall have 30 days in which to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comments are encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, any change proposed, and the name and address of the person submitting the comment. Notice is hereby given that the proposed rule may be modified before final adoption if the modifications are supported by the data and views submitted in the comments and do not result in a substantial change in the proposed rule as noticed.

Persons should note that the proposed rule establishes procedures for submission and determination of fees and expenses and does not establish standards or criteria for determinations. Laws of Minnesota 1986, Chapter 377, is effective on August 1, 1986 and applies to all contested cases which have not had a final determination as of that date. The Office has determined that the adoption of substantive standards or criteria by which decisions will be made, while necessary, are sufficiently significant and potentially controversial that a public hearing will be necessary and that there is insufficient time prior to the effective date of the law to conduct a full hearing. Therefore, the Office is proposing this procedural rule now and will be soliciting input for additional rules to be adopted at a later date as amendment to the rule presently being proposed.

Any person may make a written request for a public hearing on the rule being proposed for adoption during the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Office will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Persons who wish to submit written comments or a written request for a public hearing must submit the comments or requests to:

Duane R. Harves  
Chief Administrative Law Judge  
Minnesota Office of Administrative Hearings  
400 Summit Bank Building  
310-4th Avenue South  
Minneapolis, Minnesota 55415  
612/341-7640

If a hearing is not required, and the rules adopted, it will be submitted to the Attorney General for a review as to its legality. Notice of the date of submission of the proposed rule to the Attorney General for review will be mailed to any person making a request to the Chief Administrative Law Judge to receive the notice.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies any data or information relied upon to support the proposed rule has been prepared and is available for review at the Office. Copies of the Statement of Need and Reasonableness may be obtained from the Office at the cost of reproduction.

Laws of Minnesota 1986, Chapter 377, is also known as the Equal Access to Justice Act which, by its definitions, applies specifically to small businesses only. This rule, therefore, implements a statute which aids small businesses in litigation with the State. Additionally, the rule allows for the submission of an application for fees and expenses in written form and, if a hearing is also necessary, provides that the hearing will be conducted pursuant to the less formal, more efficient and cost-effective conference contested case rules. The consideration given to the effect of the rule on small businesses is more fully documented and discussed in the Statement of Need and Reasonableness.

**Rule as Proposed (all new material)****1400.8401 EXPENSES AND ATTORNEY FEES.**

Subpart 1. **Authorization.** Pursuant to Minnesota Statutes, sections 3.761 to 3.765, expenses and attorney's fees may be awarded to a prevailing party, other than the state, in a contested case in which the position of the state is represented by counsel, but excluding a contested case conducted for the purpose of establishing or fixing a rate or for granting or reviewing a license. Expenses and fees shall be awarded following compliance with this part if the prevailing party other than the state shows that the position of the state was not substantially justified, unless special circumstances make an award unjust.

Subp. 2. **Definitions.** For the purpose of this part, the following terms have the meanings given them in this subpart:

A. "Expenses" means the costs incurred by the party in the litigation, as defined in Minnesota Statutes, section 3.761, subdivision 4.

B. "Fees" means the reasonable attorney fees or other fees defined in Minnesota Statutes, section 3.761, subdivision 5.

C. "Party" means a person named or admitted as a party as defined in Minnesota Statutes, section 3.761, subdivision 6.

D. "State" means the state of Minnesota or any agency or official of the state of Minnesota acting in an official capacity.

E. "Substantially justified" is the statutory standard by which an administrative law judge determines whether a prevailing party is entitled to expenses or fees, and is as defined in Minnesota Statutes, section 3.761, subdivision 8.

Subp. 3. **Application.** A party seeking an award of expenses and attorney's fees shall, within 30 days of a final disposition in the contested case, submit to the judge an application that shows:

A. that the party is a prevailing party and is eligible to receive an award under this part;

B. the amount sought, including an itemized statement from any attorney, agent, or expert witness representing or appearing on behalf of the party stating the actual time expended, listing specific dates and the services performed on those dates and the rate at which fees and other expenses were computed;

C. a statement that explains with specificity how or why the position of the state agency was not substantially justified;

D. if the claim for attorney's fees exceeds \$100 per hour, a statement of facts showing that the excess award qualifies under Minnesota Statutes, section 3.761, subdivision 5, paragraph (c); and

E. a proof of service showing that the state agency and all other parties have been served, either personally or by first class mail, with a copy of the application.

The application must be signed and sworn to by the party and the attorney or other agent or representative submitting the application on behalf of the party, showing the addresses and phone numbers of all persons signing the application.

The application must be received at the office no later than 4:30 p.m. on the 30th day following the date of issuance of the final disposition.

Subp. 4. **Response or objection to application.** The state agency or any other party may respond or object to all or any part of the application for expenses and fees. A response or objection must be sworn to and filed with the judge within 14 days following the service of the application and must show:

A. the name, address, and phone number of the party and the person submitting the response or objection on behalf of the party;

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

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B. a statement showing the parts of the application being responded or objected to showing specific reasons or facts to support the response or objection;

C. a proof of service showing that all other parties have been served, either personally or by first class mail, with a copy of the response or objection; and

D. if the state agency requests a hearing, the response or objection must include the request.

Subp. 5. **Hearing on application.** A hearing on the application will be conducted if the state agency requests a hearing or if the judge determines that a hearing is necessary to gather additional facts or evidence, or for a full and fair resolution of the issues arising from the application. The hearing shall take place on the first date available on the judge's calendar which is also agreeable to all parties. It shall be conducted pursuant to the procedures for conference contested cases, parts 1400.5100 to 1400.8300.

Subp. 6. **Stay of proceedings pending appeal.** In the event that an appeal from all or any part of the final agency decision in the contested case which gives rise to the application for expenses and attorney's fees has been taken to the appropriate court, all proceedings under this part shall be stayed and all time limits imposed shall be tolled pending a final judicial determination.

Subp. 7. **Decision of the administrative law judge.** Within 30 days following the close of the record in the proceeding for the award of expenses and attorney's fees, the administrative law judge shall issue a written order which shall also contain findings and conclusions. The order shall be served on all parties and the state agency. The original order and the rest of the record of the proceedings shall be filed with the state agency at the time the order is served.

**APPLICATION.** Pursuant to the provisions of Laws of Minnesota 1986, chapter 377, section 7, part 1400.8401 applies to all contested cases that are pending on or commenced after August 1, 1986.

## Department of Commerce

### Proposed Rules Relating to Cancellation of Commercial Policies

#### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Section 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and does not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30 day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, Section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101 telephone (612) 296-5689. Any person requesting a public hearing should state her or his name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, Sections 45.023 and 61A.03. Additionally a Statement of Need and Reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statute Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

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## PROPOSED RULES

A copy of the proposed rules is attached to this Notice. Copies of this Notice and proposed rules are available and may be obtained by contacting Richard G. Gomsrud at the above address.

Michael A. Hatch  
Commissioner of Commerce

### Rules as Proposed

#### 2700.2400 SCOPE.

Except as specifically limited in part 2700.2430, parts 2700.2400 to ~~2700.2450~~ 2700.2440 apply to all commercial liability and/or property insurance policies issued by companies licensed to do business in this state except ~~workers' compensation insurance, employers' liability,~~ ocean marine insurance, accident and health insurance, excess insurance, surplus line insurance, and reinsurance.

#### 2700.2410 MIDTERM CANCELLATION.

Subpart 1. **Reason for cancellation.** No insurer may cancel a policy of commercial liability and/or property insurance during the term of the policy, except for one or more of the following reasons:

A. to H. [Unchanged.]

Subp. 2. to 4. [Unchanged.]

#### 2700.2420 NONRENEWAL.

Subpart 1. **Notice required.** ~~An insurer shall renew the policy, unless~~ At least 30 days prior to the date of expiration provided in the policy, a notice of intention not to renew the policy beyond the agreed expiration date ~~is~~ must be made to the policyholder by the insurer. If the notice is not given at least 30 days prior to the date of expiration provided in the policy, the policy shall continue in force until 30 days after a notice of intent not to renew is received by the policyholder.

Subp. 2. [Unchanged.]

#### 2700.2430 RENEWAL WITH ALTERED RATES.

Subpart 1. **General.** ~~Subject to subpart 2, if the insurer offers or purports to renew the policy at less favorable terms as to the dollar amount of coverage or deductibles, higher rates, and/or higher rating plan, the new terms, the new rates and/or rating plan may take effect on the renewal date if the insurer has sent to the policyholder notice of the new terms, new rates and/or rating plan at least 30 days prior to the expiration date. If the insurer has not so notified the policyholder, the policyholder may elect to cancel the renewal policy within the 30-day period after receipt of the notice. Earned premium for the period of coverage, if any, shall be calculated pro rata-~~

If an insurance company licensed to do business in this state offers or purports to offer to renew any commercial liability and/or property insurance policy at less favorable terms as to the dollar amount of coverage or deductibles, higher rates, and/or higher rating plan, the new terms, the new rates and/or rating plan may take effect on the renewal date of the policy if the insurer has sent to the policyholder notice of the new terms, new rates and/or rating plan at least 30 days prior to the expiration date. If the insurer has not so notified the policyholder, the policyholder may elect to cancel the renewal policy within the 30-day period after receipt of the notice. Earned premium for the period of coverage, if any, shall be calculated pro rata upon the prior rate. This subdivision does not apply to ocean marine insurance, accident and health insurance, and reinsurance.

Subp. 2. [Unchanged.]

## Department of Commerce

### Proposed Rules Relating to Real Estate Broker Licensing and Education

#### Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Section 14.21.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

# PROPOSED RULES

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and does not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30 day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, Section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101 telephone (612) 296-5689. Any person requesting a public hearing should state her or his name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, Sections 45.023 and 61A.03. Additionally a Statement of Need and Reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statute Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this Notice. Copies of this Notice and proposed rules are available and may be obtained by contacting Richard G. Gomsrud at the above address.

Michael A. Hatch  
Commissioner of Commerce

## Rules as Proposed

### 2800.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of ~~parts 2800.0100 to 2800.1700, 2800.1800 to 2800.2100, 2800.3100 to 2800.7100, 2800.7200, 2800.7300, 2800.7400, 2800.7500, 2800.7600 to 2800.8700, and 2800.9905~~ this chapter, the terms defined in this part have the meanings given them.

Subp. 2. to 12. [Unchanged.]

Subp. 13. **School Sponsor.** ~~“School”~~ “Sponsor” means a person offering or providing real estate education.

Subp. 14. [Unchanged.]

### 2800.1300 LICENSE.

Subpart 1. [Unchanged.]

Subp. 2. **Cancellation of salesperson's or broker's license.** A salesperson's or broker's license that has been canceled for failure of a licensee to complete postlicensing education requirements must be returned to the commissioner by the licensee's broker within ten days of receipt of notice of cancellation. The license shall be reinstated without reexamination by completing the required instruction, filing an application, and paying the fee for a salesperson's or broker's license within ~~one year~~ two years of the cancellation date.

Subp. 3. [Unchanged.]

### 2800.1600 NOTICE TO THE COMMISSIONER.

Subpart 1. [See Repealer.]

Subp. 2. **Change of application information.** The commissioner ~~shall~~ must be notified in writing of a change of information contained in the license application on file with the commissioner within ten days of the change.

Subp. 3. to 5. [See Repealer.]

**2800.1700 AUTOMATIC TRANSFER OF SALESPERSON'S LICENSE.**

Subpart 1. **Scope.** A salesperson may utilize the automatic license transfer provisions of Laws of Minnesota 1982, chapter 478 Minnesota Statutes, section + 82.20, subdivision 9, clause (b) if the salesperson commences ~~his or her~~ association with the broker to whom ~~he or she~~ the salesperson is transferring, as evidenced by the dates of the signatures of both brokers on the form ~~in part 2800.9955 prescribed by the commissioner~~, within five days after terminating ~~his or her~~ the salesperson's association with the broker from whom ~~he or she~~ the salesperson is transferring, provided the salesperson's educational requirements are not past due.

A salesperson may not utilize the automatic license transfer provisions of Laws of Minnesota 1982, chapter 478 Minnesota Statutes, section + 82.20, subdivision 9, clause (b) if ~~he or she~~ the salesperson has failed to notify the commissioner within ten days of any change of information contained in ~~his or her~~ the salesperson's license application on file with the commissioner or of a civil judgment, disciplinary action, or criminal offense, which notice is required pursuant to part 2800.1600.

Subp. 2. **Procedure.** An application for automatic transfer shall be made only on the form ~~in part 2800.9955 prescribed by the commissioner~~. The transfer is ineffective if the form is not completed in its entirety.

The form ~~in part 2800.9955~~ shall be accompanied by a \$10 transfer fee, and the license renewal fee, if applicable, plus an additional \$10 if the salesperson holds a subdivided land license. Cash will not be accepted. If the licensee holds a subdivided land license it must be transferred at the same time as the salesperson's license. In order for the transfer of the subdivided land license to be effective the broker to whom the salesperson is transferring must also hold a subdivided land license.

The signature ~~on the form in part 2800.9955~~ of the broker from whom the salesperson is transferring must predate the signature of the broker to whom the salesperson is transferring. The salesperson is unlicensed for the period of time between the times and dates of both signatures. The broker from whom the salesperson is transferring shall sign and date the transfer application upon the request of the salesperson and shall destroy the salesperson's license immediately.

Subp. 3. **Effective date.** ~~Effective date:~~

A. The transfer is effective when the broker to whom the salesperson is transferring signs and dates the transfer application form ~~in part 2800.9955~~, provided the commissioner receives the form and fee within 72 hours after the date and time of the new broker's signature, either by certified mail or personal delivery to the commissioner's office. In the event of a delay in mail delivery, an application postmarked within 24 hours of the date of the signature of the new broker shall be deemed timely received. The properly executed automatic transfer form serves as a temporary real estate license for no more than 45 days.

B. and C. [Unchanged.]

**2800.1750 REAL ESTATE SALESPERSON AUTOMATIC TRANSFER.**

The real estate salesperson automatic transfer shall be in the form ~~set forth in part 2800.9955 prescribed by the commissioner~~.

**2800.1751 INDIVIDUAL APPOINTMENT OF ATTORNEY FOR SERVICE OF PROCESS.**

STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE  
CENTRAL LICENSING SECTION — REAL ESTATE UNIT  
5th Floor, Metro Square Bldg.  
Seventh and Robert Streets  
St. Paul, Minnesota 55101

**INDIVIDUAL APPOINTMENT OF ATTORNEY FOR SERVICE OF PROCESS**

KNOW ALL PERSONS BY THESE PRESENTS:

That in compliance with the Laws of the State of Minnesota, \_\_\_\_\_ a non-resident, does hereby appoint the Commissioner of ~~Securities~~ Commerce of the State of Minnesota, his/her successor or successors as his/her true and lawful attorney upon whom may be served all legal process in any action or proceeding in which he/she may be a party and which relates to or involves any transaction covered by Chapter 82, Minnesota Statutes, and does hereby expressly consent and agree that service upon such attorney shall be as valid and binding as if due and personal service had been made upon him/her and that such appointment shall be irrevocable.

**KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. Strike outs indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.**

**PROPOSED RULES**

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me, a notary public in and for said County and State, \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument and who, being by me first sworn, acknowledged that he/she executed the same as his/her free act and deed.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County \_\_\_\_\_  
My Commission expires \_\_\_\_\_

(NOTARIAL SEAL)

**2800.1900 FAILURE TO RENEW LICENSE.**

If a license lapses or becomes ineffective due to the licensee's failure to file a timely renewal application or otherwise, the commissioner may institute a revocation or suspension proceeding within ~~one year~~ two years after the license was last effective and enter a revocation or suspension order as of the last date on which the license was in effect.

**2800.2100 COURSE COMPLETION CERTIFICATES FOR SALESPERSON'S LICENSE.**

Applicants for a salesperson's license shall submit to the commissioner, along with their application for licensure, a copy of the course completion certificate ~~in part 2800.9910 for course courses I, and for courses II, and III if completed prior to being licensed.~~

Students are responsible for maintaining copies of course completion certificates.

**2800.2150 COURSE COMPLETION CERTIFICATE.**

The real estate education course completion certificate shall be in the form ~~in part 2800.9910~~ set forth by the commissioner.

**2800.4200 NEGOTIATIONS.**

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Exclusive agency agreements.** A licensee shall not negotiate the sale, exchange, lease, or listing of any real property directly with the owner or lessor knowing that the owner or lessor has executed a written contract granting exclusive agency in connection with the property to another real estate broker, buyer, or lessee nor shall a licensee negotiate the purchase, lease, or exchange knowing that the buyer or lessee has executed a written contract granting an exclusive agency for the purchase, lease, or exchange of real property to another real estate broker. The licensee shall ~~shall~~ must inquire of the owner ~~or~~, lessor, buyer, or lessee whether such a contract exists.

Subp. 7. **Prohibition against interference with contractual relationships of others.** Licensees shall not induce any party to a contract of sale, purchase, or lease, option, or exclusive listing agreement or buyer's agreement, to breach the contract, option, or agreement.

Subp. 8. [Unchanged.]

**2800.5100 ~~NINETY-HOUR INITIAL~~ PRELICENSE EDUCATION.**

An approved ~~90-hour~~ course of ~~initial~~ prelicense education shall consist of three 30-classroom-hour courses to be designated as course I, course II, and course III. Pursuant to Minnesota Statutes, section 82.22, subdivision 6, each applicant for a salesperson's license or salesperson is required to complete all courses successfully. Courses I, II, and III must be taken in sequence and may not be taken concurrently.

**2800.5200 SALESPERSON'S EXAMINATION.**

Applicants must successfully complete all portions of the salesperson's examination within one year after the successful completion of course I. After this date, credit for course I will expire and successful completion of the first 30-hour course must be repeated before taking the salesperson's examination.

An exception will be made for students pursuing a full-time course of study in either a two-year or four-year real estate education

program. The burden of demonstrating full-time status is on the student. Applicants must successfully complete the salesperson's examination within one year after the successful completion of the two-year or four-year course of study.

**2800.5300 APPLICATION FOR SALESPERSON'S LICENSE.**

Applicants must apply for a salesperson's license within one year ~~after~~ of successful completion of all portions of the licensing examination. Courses II and III must be completed prior to application. Applicants who fail to apply for a license within the one-year period must retake course I and successfully complete the examination.

**2800.5400 POSTLICENSING EDUCATION COURSE.**

~~Courses II and III~~ Thirty hours of approved continuing education must be completed within one year after obtaining a salesperson's license.

**2800.5600 LIMITATIONS ON COURSE SUBSTITUTIONS.**

No course may be substituted for course I. Written requests for substitutions for courses II and III shall be granted if the request is submitted no later than ~~six months~~ 30 days prior to the date upon which that education is due to be completed, if:

A. [Unchanged.]

B. the salesperson demonstrates successful completion of a course ~~in another jurisdiction~~ that is substantially similar to course II or III.

**2800.5900 COMPLETION OF INITIAL EDUCATION.**

Successful completion of courses I, II, and III includes full-time classroom attendance throughout the course, completion of required assignments or reading materials if applicable, and passage of an examination designed by the ~~school~~ sponsor that is sufficiently comprehensive to measure the student's knowledge of all aspects of the course.

**2800.6500 COURSE III CURRICULUM.**

Subpart 1. to 9. [Unchanged.]

Subp. 10. **Combination course.** A combination course shall consist of no more than three of the preceding nine subparts and shall devote at least ten hours to each subject. A ~~school~~ sponsor that proposes to offer a combination course III shall submit to the commissioner, as part of the application for approval, an outline setting forth the subjects to be addressed and the number of hours proposed to be devoted to each topic.

**2800.6800 CONTINUING EDUCATION.**

Subpart 1. [Unchanged.]

Subp. 2. and 3. [See Repealer.]

Subp. 4. **Examinations.** Course examinations will not be required for continuing education courses unless they are required by the ~~school~~ sponsor or the licensee elects to take course III for continuing education credit.

Subp. 5. and 6. [Unchanged.]

Subp. 7. **Disapproved courses.** ~~Approval will not be granted for courses designed to prepare students for passing any licensing examinations; in mechanical office or business skills, including typing, speed-reading, use of calculators, or other machines or equipment; in sales promotion, including meetings held in conjunction with the general business of the licensee's broker; or in motivation, salesmanship, psychology, or time management.~~ Nonapproved courses for continuing education. The following are not approved courses:

A. a course which is approved for prelicense training;

B. courses designed to prepare students for a license examination;

C. courses in mechanical office or business skills, including typing, speed reading, or use of calculators or other machines or equipment;

D. courses in sales promotion, including meetings held in conjunction with the general business of the licensee;

E. courses in motivation, salesmanship, psychology, time management, or communication; or

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## PROPOSED RULES

F. courses related to office management or intended to improve the operation of the licensee's business.

Subp. 8. **Continuing education credit for course III.** Licensees may attend or teach course III for continuing education credit. Credit will be given for less than the entire course III only for combination courses offered pursuant to part 2800.6400, subpart 10. Credit will be given only for attendance at segments of the combination course III which completely cover a subject. An examination will be required only if the licensee takes the entire combination course or if the ~~school~~ sponsor requires a separate examination for each subject covered.

Subp. 9. [Unchanged.]

Subp. 10. Professional designations. Courses leading to the following professional designations shall automatically qualify for continuing education credit:

- A. Certified Property Manager (CPM) offered by the Institute of Real Estate Management.
- B. Member, Appraisal Institute (MAI) offered by the American Institute of Real Estate Appraisers.
- C. Certified Commercial Investment Member (CCIM) offered by the Realtors National Marketing Institute.
- D. Society of Industrial Realtors (SIR) offered by the Society of Industrial Realtors.
- E. Certified Mortgage Banker (CMB) offered by the Mortgage Bankers Association.
- F. Senior Real Property Appraiser (SRPA) offered by the Society of Real Estate Appraisers.
- G. Accredited Farm and Land Member (AFLM) offered by the Realtors Land Institute.

### 2800.7150 APPLICATION FOR COURSE APPROVAL FOR COURSES I, II, AND III.

The real estate education application for course approval for courses I, II, and III shall be in the form in ~~part 2800.9920~~ prescribed by the commissioner.

### 2800.7175 APPLICATION FOR COURSE APPROVAL FOR CONTINUING EDUCATION.

The real estate education application for course approval for continuing education shall be in the form in ~~part 2800.9935~~ prescribed by the commissioner.

### 2800.7200 COURSE APPROVAL.

Subpart 1. [Unchanged.]

Subp. 2. **Permitted course offerings.** Courses complying with Minnesota Statutes, chapter 82 and the rules adopted thereunder may be offered or sponsored by ~~schools~~ sponsors.

Coordinators must immediately notify the commissioner of any material change in an application for approval or in the exhibits attached to it.

Subp. 3. [See Repealer.]

Subp. 4. **Applications.** Applications for course approval will be accepted on forms prescribed by the commissioner no later than 30 days prior to the course offering ~~and shall include the following:~~

- ~~A. the course title;~~
  - ~~B. the date, time, and place of the course offering;~~
  - ~~C. the name, address, and telephone number of the sponsoring entity;~~
  - ~~D. the name, address, and telephone number of the course coordinator;~~
  - ~~E. the name, address, and telephone number of the instructor;~~
  - ~~F. the name, edition, and date of publication of the text to be used, if applicable;~~
  - ~~G. a detailed outline of the course offering, or a statement of compliance with the prescribed outlines for course I, II, or III;~~
- ~~and~~
- ~~H. compliance with the service of process provisions of Minnesota Statutes, section 82.31, if applicable.~~

Subp. 5. [See Repealer.]

Subp. 6. **Subsequent offerings of courses.** Approval shall be granted for subsequent offerings of identical continuing education courses without requiring a new application if a notice of subsequent offerings, ~~as in part 2800.9945~~ on the form prescribed by the commissioner, is filed with the commissioner at least 30 days in advance of the date the course is to be held.

Subsequent offerings of identical courses I, II, and III do not require the approval of or notice to the commissioner.

**2800.7250 NOTICE OF SUBSEQUENT OFFERINGS OF CONTINUING EDUCATION COURSES.**

The real estate education notice of subsequent offerings of continuing education courses shall be in the form ~~in part 2800.9945~~ prescribed by the commissioner.

**2800.7400 COURSE COORDINATOR.**

Subpart 1. **Mandatory.** Each course of study shall have one coordinator, approved by the commissioner, who is responsible for supervising the program and assuring compliance with Minnesota Statutes, chapter 82 and the rules adopted thereunder. ~~Schools~~ Sponsors may engage an additional approved coordinator in order to assist the coordinator or to act as a substitute for the coordinator in the event of an emergency or illness.

Subp. 2. [Unchanged.]

Subp. 3. **Form for coordinator approval.** Application for approval must be submitted on the form ~~in part 2800.9915~~ prescribed by the commissioner.

Subp. 4. **Responsibilities.** A coordinator shall be responsible for:

A. to E. [Unchanged.]

F. maintaining records relating to course offerings, instructors, and student attendance for a period of three years from the date on which the course was completed; these records shall be made available to the commissioner upon request (In the event that a ~~school~~ sponsor should cease operation for any reason, the coordinator shall be responsible for maintaining the records or providing a custodian for the records acceptable to the commissioner. Under no circumstances will the commissioner act as custodian of the records. In order to be acceptable to the commissioner, custodians must agree to make copies of acknowledgements available to students at a reasonable fee);

G. [Unchanged.]

H. attending workshops or instructional programs as reasonably required by the commissioner; and

I. ~~reporting on the form in part 2800.9930 the attendance of licensed students in courses II and III to the commissioner within 14 days of their completion of the course; and~~

~~+~~ providing students with course completion certificates ~~as in part 2800.9910,~~ for courses I, II, and III, and continuing education courses.

**2800.7450 APPLICATION FOR COORDINATOR APPROVAL.**

The real estate education application for coordinator approval shall be in the form ~~in part 2800.9915~~ prescribed by the commissioner.

**2800.7500 INSTRUCTORS.**

Subpart 1. [Unchanged.]

Subp. 2. **Qualifications.** The following provisions relate to the approval and qualification of instructors:

A. Applicants shall submit requests for instructor approval on the form ~~in part 2800.9925~~ prescribed by the commissioner for courses I, II, and III and the form ~~in part 2800.9940~~ prescribed by the commissioner for continuing education courses. Requests must be submitted at least 30 days prior to instruction in an approved course.

B. Applicants for Courses I, II and III shall be approved if they ~~achieve a rating of 70 points or higher based upon the scale~~ have the education and/or experience requirements set forth in part 2800.9905.

C. and D. [Unchanged.]

Subp. 3. [Unchanged.]

**2800.7550 APPLICATION FOR INSTRUCTOR APPROVAL FOR COURSES I, II, III.**

The real estate education application for instructor approval for courses I, II, and III shall be in the form ~~in part 2800.9925~~ prescribed by the commissioner.

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# PROPOSED RULES

## 2800.7575 APPLICATION FOR INSTRUCTOR APPROVAL FOR CONTINUING EDUCATION.

The real estate education application for instructor approval for continuing education shall be in the form ~~in part 2800.9940~~ prescribed by the commissioner.

## 2800.7600 PROHIBITED PRACTICES FOR COORDINATORS AND INSTRUCTORS.

Subpart 1. **Prohibitions.** In connection with an approved course, coordinators and instructors shall not:

A. recommend or promote the services or practices of any particular real estate brokerage, franchise, coordinator, instructor, or ~~school~~ sponsor;

B. and C. [Unchanged.]

D. require students to participate in other programs or services offered by the ~~school~~ sponsor, coordinator, or instructor;

E. to G. [Unchanged.]

Subp. 2. and 3. [Unchanged.]

## 2800.7900 FEES.

Fees for approved courses and related materials shall be reasonable and clearly identified to students. In the event that a course is canceled for any reason, all fees shall be returned promptly. In the event that a course is postponed for any reason, students shall be given the choice of attending the course at a later date or of having their fees refunded in full. If a student is unable to attend a course or cancels his or her registration in a course, ~~school~~ sponsor policies regarding refunds shall govern.

## 2800.8100 CONFLICT OF INTEREST.

A course will not be approved if it is ~~offered~~ sponsored by a person who derives substantial income from the real estate brokerage business.

## 2800.8300 ADVERTISING COURSES.

Subpart 1. [Unchanged.]

Subp. 2. **Approval statement.** No advertisement, pamphlet, circular, or other similar materials pertaining to an approved offering may be circulated or distributed in this state unless one of the following ~~statement statements~~ is prominently displayed ~~on the cover of~~ it:

For ~~initial~~ prelicense education courses, "This course has been approved by the Minnesota commissioner of commerce ~~pursuant to Minnesota Statutes, section 82-22, subdivision 6 for initial education courses;~~ or for real estate prelicense education."

For continuing education courses, "This course has been approved by the Minnesota commissioner of commerce ~~pursuant to Minnesota Statutes, section 82-22, subdivision 13, relating to continuing real estate education for real estate continuing education.~~"

The preceding language need not be displayed on the cover of any out-of-state offering advertisement; however, it is the responsibility of the ~~school~~ sponsor to provide students with evidence that the course has been approved.

Subp. 3. [Unchanged.]

Subp. 4. Limitation on advertising. Courses may not be advertised prior to approval, unless the course is described in the advertising as "approval pending" and that is in fact the case.

## 2800.8400 NOTICE TO STUDENTS.

At the beginning of each approved offering, the following notice shall be handed out in printed form or shall be read to students: "This real estate educational offering is recognized by the commissioner of commerce as satisfying \_\_\_\_\_ hours of credit toward \_\_\_\_\_ (choose one, or more, of the following as is appropriate: prelicensing, postlicensing, or continuing) real estate education requirements pursuant to Minnesota Statutes, section 82.22. If you have any comments about this real estate offering, please mail them to the Commissioner of Commerce, 500 Metro Square Building, Saint Paul, Minnesota 55101."

## 2800.8500 AUDITS.

The commissioner reserves the right to audit subject offerings with or without notice to the ~~school~~ sponsor.

## 2800.8700 REPORTS TO COMMISSIONER.

Continuing education credits shall be reported by the licensee on the form ~~in part 2800.9950~~ prescribed by the commissioner.

Forms will not be accepted unless they reflect all the ~~entire~~ 45 required hours. Incomplete forms will be returned to the licensee.

Forms must be received by the commissioner no later than June 15 30 of the year in which the credits are due. Forms ~~which that~~ are ~~mailed~~ postmarked no later than June 15 shall be deemed timely received if addressed to: Real Estate Licensing Unit, 500 Metro Square Building, Saint Paul, Minnesota 55101, ~~and postmarked prior to 12:01 a.m. on June 14.~~ Licensees are encouraged to submit

the form as soon as they have completed the 45 required hours of continuing education credit.

#### **2800.8750 CONTINUING EDUCATION COURSE VERIFICATION.**

The real estate education continuing education course verification shall be in the form ~~in part 2800.9950~~ prescribed by the commissioner.

#### **2800.9905 RATING SCALE QUALIFICATIONS FOR INSTRUCTORS.**

Ratings for Applicants seeking approval as instructors of courses I, II, and III must possess the following qualifications:

Points	Criteria
20	2-year degree or certificate;
40	4-year degree;
50	post graduate degree;
60	2-year real estate degree or certificate;
70	4-year real estate degree or certificate. Points may not be accumulated in the case of individuals holding more than one degree or certificate;
40	Each 45 hours of continuing real estate education attended or taught. No points will be allowed for periods of less than 45 hours;
30	First three-year period in which engaged full-time in the real estate industry as a licensed broker or salesperson or, in the case of applicants for Course III, the first three-year period in which engaged full-time in a business or profession relating to the subject being taught. No points will be allowed for an applicant who has been licensed for less than three years or who has been engaged in a related business or profession for less than three years;
40	Each full year, after the first full three years, in which engaged full-time in the real estate industry as a licensed broker or salesperson or, in the case of applicants for Course III, each full year, after the first full three years, in which engaged full-time in a business or profession relating to the subject being taught.

A. a four-year real estate degree;

B. a four-year degree with three years full-time experience in the real estate industry;

C. a four-year degree with three years full-time experience in the business or profession relating to the subject being taught;

D. a post-graduate degree and completion of 45 hours of continuing real estate education;

E. a two-year real estate degree and completion of 45 hours of continuing real estate education;

F. a two-year degree or certificate with five years full-time experience in the real estate industry;

G. a degree or certificate with five years full-time experience in the business or profession relating to the subject being taught; or

H. eight years of recent experience in the subject area being taught.

#### **Rules as Proposed (all new material)**

##### **2805.0100 DEFINITIONS.**

Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subp. 3. **Licensee.** "Licensee" means a person duly licensed under Minnesota Statutes, chapter 82.

Subp. 4. **Loan broker.** "Loan broker" means a licensed real estate broker or salesperson who, for another and for a commission, fee, or other valuable consideration or with the intention or expectation of receiving the same, directly or indirectly negotiates or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance on real estate, or represents himself or herself or otherwise holds himself or herself out as a licensed real estate broker or salesperson, either in connection with any transaction in which he or she directly or indirectly negotiates or offers or attempts to negotiate a loan, or in connection with the conduct of his or her ordinary business activities as a loan broker.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

## PROPOSED RULES

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"Loan broker" does not include a licensed real estate broker or salesperson who, in the course of representing a purchaser or seller of real estate, incidentally assists the purchaser or seller in obtaining financing for the real property in question if the licensee does not receive a separate commission, fee, or other valuable consideration for this service.

Subp. 5. **Overpayment.** "Overpayment" means any payment of money in excess of a statutory fee or for a license for which a person does not qualify.

Subp. 6. **Override clause.** "Override clause" means a provision in a listing agreement or similar instrument allowing the broker to receive a commission when, after the listing agreement has expired, the property is sold to persons with whom a broker or salesperson had negotiated or exhibited the property prior to the expiration of the listing agreement.

Subp. 7. **Person.** "Person" means a natural person, firm, institution, partnership, corporation, or association.

Subp. 8. **Primary broker.** "Primary broker" means the broker on whose behalf salespersons are licensed to act pursuant to Minnesota Statutes, section 82.20, subdivision 6. In the case of a corporation licensed as a broker, "primary broker" means each officer of the corporation who is individually licensed to act as a broker for the corporation. In the case of a partnership, "primary broker" means each partner licensed to act as a broker for the partnership.

Subp. 9. **Property.** "Property" means real property or other property within the scope of Minnesota Statutes, chapter 82, unless the context clearly indicates otherwise.

Subp. 10. **Protective list.** "Protective list" means the written list of names and addresses of prospective purchasers with whom a licensee has negotiated the sale or rental of the property or to whom a licensee has exhibited the property prior to the expiration of the listing agreement. For the purposes of this subpart, "property" means the property that is the subject of the listing agreement in question.

Subp. 11. **Real estate broker or broker.** "Real estate broker" or "broker" as set forth in Minnesota Statutes, section 82.17, subdivision 4, clause (b) shall not apply to the originating, making, processing, selling, or servicing of a loan in connection with ordinary business activities by a mortgagee, lender, or servicer approved or certified by the secretary of housing and urban development, or approved or certified by the administrator of veterans affairs, or approved or certified by the administrator of the farmers home administration, or approved or certified by the federal home loan mortgage corporation, or approved or certified by the federal national mortgage association.

Subp. 12. **Rental service.** "Rental service" means a person who gathers and catalogs information concerning apartments or other units of real estate available for rent, and who, for a fee, provides information intended to meet the individual needs of specifically identified lessors or prospective lessees. This term shall not apply to newspapers or other periodicals with a general circulation or individual listing contracts between an owner or lessor of property and a licensee.

Subp. 13. **Sponsor.** "Sponsor" means a person offering or providing real estate education.

Subp. 14. **Business of financial planning.** "Business of financial planning" means providing, or offering to provide, financial planning services or financial counseling or advice, on a group or individual basis. A person who, on advertisements, cards, signs, circulars, letterheads, or in any other manner, indicates that he or she is a "financial planner," "financial counselor," "financial advisor," "investment counselor," "estate planner," "investment advisor," "financial consultant," or any other similar designation or title or combination thereof, is considered to be representing himself or herself to be engaged in the business of financial planning.

### 2805.0200 SCOPE OF APPLICATION.

Prior rules exclusively govern all suits, actions, prosecutions, or proceedings that are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of these rules. Judicial review of all administrative orders issued prior to the effective date of these rules as to which review proceedings have not been instituted by the effective date of these rules is governed by prior rules.

### 2805.0300 COMPUTATION OF TIME.

Subpart 1. **Days.** Where the performance or doing of any act, duty, matter, payment, or thing is ordered or directed, and the period of time or duration for the performance or doing thereof is prescribed and fixed by law, rule, or order, such time, except as otherwise provided in subpart 2, shall be computed so as to exclude the first and include the last day of any such prescribed or fixed period or duration of time. When the last day of such period falls on Sunday or on any day made a legal holiday, by the laws of this state or of the United States, such day shall be omitted from the computation.

Subp. 2. **Months.** When the lapse of a number of months before or after a certain day is required by law, rule, or order, the number of months shall be computed by counting the months from such day, excluding the calendar month in which such day occurs, and including the day of the month in the last month so counted having the same numerical order as the day of the month from which the computation is made, unless there be not so many days in the last month so counted, in which case the period computed shall expire with the last day of the month so counted.

**2805.0400 NOTICE TO COMMISSIONER.**

Subpart 1. **Mandatory.** Licensees shall notify the commissioner of the facts in subparts 2 to 4.

Subp. 2. **Civil judgment.** Licensees must notify the commissioner in writing within ten days of a final adverse decision or order of a court, whether or not the decision or order is appealed, regarding any proceeding in which the licensee was named as a defendant, and which alleged fraud, misrepresentation, or the conversion of funds, if the final adverse decision relates to the allegations of fraud, misrepresentation, or the conversion of funds.

Subp. 3. **Disciplinary action.** The licensee must notify the commissioner in writing within ten days of the suspension or revocation of the licensee's real estate or other occupational license issued by this state or another jurisdiction.

Subp. 4. **Criminal offense.** The licensee must notify the commissioner in writing within ten days if the licensee is charged with, adjudged guilty of, or enters a plea of guilty or nolo contendere to a charge of any felony, or of any gross misdemeanor alleging fraud, misrepresentation, conversion of funds, or a similar violation of any real estate licensing law.

**RENUMBERING.** Renumber the parts in column A as the parts in column B.

Column A	Column B
2800.3100	2805.0500
2800.3200	2805.0600
2800.3300	2805.0700
2800.3400	2805.0800
2800.3500	2805.0900
2800.3600	2805.1000
2800.3700	2805.1100
2800.3800	2805.1200
2800.3900	2805.1300
2800.4000	2805.1400
2800.4100	2805.1500
2800.4200	2805.1600
2800.4300	2805.1700
2800.4400	2805.1800
2800.4500	2805.1900
2800.4600	2805.2000

**REPEALER.** Minnesota Rules, parts 2800.1600, subparts 1, 3, 4, and 5; 2800.2175; 2800.5500; 2800.6800, subparts 2 and 3; 2800.7200, subparts 3 and 5; 2800.9910; 2800.9915; 2800.9920; 2800.9925; 2800.9930; 2800.9935; 2800.9940; 2800.9945; 2800.9950; and 2800.9955 are repealed.

## Department of Energy and Economic Development Energy Finance Division

### Proposed Rules Relating to the Agricultural Resource Loan Guaranty Program

#### Notice of Proposed Adoption of Rules without a Public Hearing

Notice is hereby given that the Agricultural Resource Loan Guaranty Board proposes to adopt the above-entitled rules without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rules is Minnesota Statutes, section 41A.04, subdivision 4.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

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Any person may make a written request for a public hearing on the rule within the 30 day comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

John J. O'Brien  
Resource Development Finance Division  
900 American Center Building  
150 East Kellogg Boulevard  
St. Paul, MN 55101  
Telephone: 612/297-1944

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule.

These rules govern loan application and bond issuance procedures for the Agricultural Resource Loan Guaranty Board's agricultural processing financial programs. The rules may affect small businesses by making available the opportunity to obtain project financing for eligible costs at a favorable rate of interest through the issuance of industrial revenue bonds. The rules also allow the use of the program to offer loan guaranties to lenders for loans made to agricultural processing businesses for eligible project costs.

The rules describe the purpose of the program, definitions and the availability for businesses of eligible financial assistance. The rules also describe the contents of an application and the application procedures. Also, the criteria for approval of eligible financial assistance is outlined along with the general terms and conditions of loan guarantees. The rules additionally describe principal and interest assistance through the program and bond issuance procedures.

(A copy of the rule is available for review from John O'Brien at the aforementioned address upon request.)

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from John O'Brien at the aforementioned address upon request.

If no hearing is required, upon adoption of the noncontroversial rule, the rule and the required supporting noncontroversial rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, must submit the written request to John O'Brien at the aforementioned address.

23 May 1986

Jay Kiedrowski  
Chairman, Agricultural Resource  
Loan Guaranty Board

### Rules as Proposed (all new material)

#### 1580.0100 PURPOSE AND AUTHORITY.

Parts 1580.0100 to 1580.0900 are authorized by Minnesota Statutes, section 41A.04, subdivision 4, to carry out the purposes of Minnesota Statutes, chapter 41A, and to establish a process for application and approval of eligible financial assistance for agricultural resource projects.

#### 1580.0200 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 1580.0100 to 1580.0900, the terms defined in this part and in Minnesota Statutes, section 41A.02, have the meanings given to them.

Subp. 2. **Chair.** "Chair" means the commissioner of finance acting as chair of the Agricultural Resource Loan Guaranty Board.

Subp. 3. **Administrator.** "Administrator" means the commissioner of energy and economic development acting as the chief administrative officer of the Agricultural Resource Loan Guaranty Board, or a designee.

Subp. 4. **County authority.** "County authority" means a rural development finance authority, or any county exercising the power of a rural development finance authority, pursuant to Minnesota Statutes, chapter 362A.

**1580.0300 AVAILABILITY OF ELIGIBLE FINANCIAL ASSISTANCE.**

Subpart 1. **Purpose.** Loan guarantees or loans from bond proceeds are available from the board to further the development of the state's agricultural resources and to improve the market for its agricultural products.

Subp. 2. **Amount of loan guarantee or bond issue; criteria.** The total principal amount of any guaranteed loan or bond issue may not exceed 80 percent of the total eligible costs of the related project as estimated by the board at the time the commitment to guarantee a loan or issue bonds is made, or in the case of a refunding or refinancing loan, 80 percent of the aggregate amount of principal and interest refunded or refinanced.

In determining the percentage of a loan guarantee or the amount of a bond issue for the project, the board will consider the following factors:

- A. the amount of state financial assistance necessary to assure the feasibility of the project;
- B. the amount of state financial assistance necessary to assure the lender's financial participation in the project;
- C. the impact the project will have on the state and its agricultural resources; and
- D. the availability of funds for state financial assistance.

Subp. 3. **Eligible project costs.** Project costs eligible for a guaranteed loan or bond issue are defined in Minnesota Statutes, section 41A.02, subdivision 10, and include the following:

- A. land and building acquisition costs;
- B. site preparation;
- C. construction costs;
- D. engineering costs;
- E. equipment and machinery;
- F. bond issuance costs;
- G. underwriting or placement fees;
- H. permit and application fees, guarantee fees, insurance, letters of credit, and surety bonds;
- I. fees of the board for application and guarantee;
- J. certain contingency costs;
- K. interest costs during construction;
- L. legal fees;
- M. costs of environmental review; or

N. any other expenses incurred by the borrower that are reasonably required for the construction and completion of the project.

Working capital is not considered a cost of construction and completion of the project and is not an eligible project cost for a guaranteed loan or bond issue.

Subp. 4. **Security for guaranteed loan or bond issue.** The guaranteed loan or bond issue must be secured by the best available collateral, which must include at a minimum, a mortgage on and security interest in all real and personal property comprising the project.

Subp. 5. **Increase in project costs.** If the actual cost of a project exceeds the cost estimate, the board may consent to an increase in the amount of the guaranteed loan or bond issue pursuant to Minnesota Statutes, sections 41A.03, subdivision 2, and 474.17 to 474.25, if it determines that the increased costs will not jeopardize the board's interest and are necessary for the successful completion or operation of the project. The increase in the principal amount of the guaranteed loan or bond issue must not exceed 80 percent of the increased costs. The board may guarantee up to 90 percent of the increase in the principal amount of the guaranteed loan and interest on that amount.

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## PROPOSED RULES

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### 1580.0400 CONTENTS OF APPLICATION.

Subpart 1. **Application forms.** The administrator shall prepare application forms for use by applicants. The application must provide the following information, unless waived by the board pursuant to subpart 2:

A. a description of the scope, nature, extent, and location of the project, including a preliminary or conceptual design of the project and a description of the technology to be applied;

B. the identity of the borrower and the prior experience of the borrower as it relates to the project;

C. a detailed, itemized estimate of the total cost of the project, including escalation and contingencies, with an explanation of the assumptions underlying the estimates;

D. a general description of the financial plan of the project, including the sources and uses of funds, the types and priorities of all security interests to be granted as security for the guaranteed loans or loans from bond proceeds and the project, and all other project related debt and equity;

E. an environmental report analyzing potential environmental effects of the project, any necessary or proposed mitigation measures, and other available data that is relevant to an environmental assessment;

F. a description of applications to be filed and an estimated timetable of approvals or permits required by federal, state, and local government agencies as conditions for construction and commencement of operation of the project;

G. an estimated construction schedule;

H. an analysis of the estimated cost and volume of production and market demand for the product, including economic factors justifying the analysis, and proposed and actual contracts or letters of intent relating to the supply of feedstock and raw materials and marketing or purchase of the production;

I. pro forma cash flow statements for the first five years of project operation, including income statements and balance sheets;

J. a description of the borrower's organization and, where applicable, a copy of its articles of incorporation or partnership agreement and bylaws;

K. the estimated amount of the loan from bond proceeds or the percentage of the loan guarantee requested, the proposed repayment schedule, a description of all security and collateral, and other terms and conditions of the loan;

L. an estimate of the amounts and times of receipt of guarantee and bond fees, sales and use taxes, property tax increments, and any other governmental charges which may be available for the support of the state guarantee fund as a result of the construction of the project, with an analysis of the assumptions on which the estimate is based;

M. a copy of any lending commitment or letter of intent issued by a lender to the borrower;

N. if a loan guarantee is requested, a statement from the lender, concerning the lender's general experience in financing and servicing debt incurred for projects of the size and general type of the project, and its proposed servicing and monitoring plan. In addition, the following information must be submitted:

(1) the term of the loan, the interest rate, and amortization schedule and other terms and conditions of the lender;

(2) a certification and supporting documentation that the lender has determined the project to be economically feasible in accordance with generally accepted commercial lending practices;

(3) an appraisal of collateral showing total retail value;

(4) a statement of informed consent signed by an authorized officer of the lender regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

O. a description of any legal actions pending or to be commenced against the borrower, including an explanation of each of these actions and borrower's defenses, if any;

P. a description of all potentially competitive products that are produced or processed in Minnesota and an analysis of the competitive impact of the project on the competing products and producers;

Q. if the application is made by an applicant other than the county authority and if tax increment financing is to be used for the project pursuant to Minnesota Statutes, section 41A.06, subdivision 5, a copy of a resolution adopted by the county authority where the project is located authorizing the use of tax increment financing;

R. a statement of informed consent by the applicant regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d). If the applicant is a corporation, then an authorized representative of the applicant shall provide a statement of informed consent in a form similar to that provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d); and

S. any additional information reasonably related to (1) the criteria in part 1580.0600, and reasonably required for the board's consideration of project eligibility and conformity to generally accepted commercial lending practices as required by banks or other financial institutions considering such a project for debt financing and (2) to the purposes of Minnesota Statutes, section 41A.01.

Subp. 2. **Waiver of application requirements.** An applicant may request the board to waive any of the requirements of subpart 1, items (A) to (O). The request must be made in writing to the administrator. The board may waive a requirement if it determines that the requirement is not necessary to evaluate the eligibility or feasibility of the project. A request for waiver must state the reasons why, in the applicant's judgment, the information is not necessary.

Subp. 3. **Feasibility study.** The board must require a feasibility study for the project, if the board determines that a study is necessary for its consideration of the project's eligibility for a loan guarantee or a loan from bond proceeds. The feasibility study must address those factors that the board determines are necessary in light of generally accepted commercial lending practices and the requirements of Minnesota Statutes, chapter 41A.

#### **1580.0500 APPLICATION PROCEDURE.**

Subpart 1. **Application forms.** Upon the request of a person seeking a loan guaranty or a loan from bond proceeds, the administrator shall provide application forms for use by the person.

Subp. 2. **Submission of application.** An applicant for eligible financial assistance must make written application to the board. This written application must include the information described in part 1580.0400, subpart 1. The applicant shall submit the completed application along with the necessary exhibits and attachments to the administrator. The administrator may require the borrower or lender to provide additional information that is necessary for the review of the application. The administrator shall notify the applicant of receipt of the application.

Subp. 3. **Review by administrator.** The administrator shall review the application according to generally accepted commercial lending practices to determine whether or not to submit the application to the board for final action.

The administrator shall submit the application to the board for final action if the administrator determines:

A. that the project appears to be eligible for a loan guarantee or a loan from bond proceeds, and conforms to the purpose and requirements of Minnesota Statutes, chapter 41A;

B. that the application is complete or would be complete except for the applicant's request for a waiver pursuant to part 1580.0400, subpart 2;

C. that the project is both economically and technically feasible, and can reasonably be expected to maintain a sound financial condition and to retire the principal and pay interest on the guaranteed loan or on the bonds in accordance with the terms of the loan agreement;

D. that the project and its development are economically advantageous to the state; and

E. that money is available to fund the loan guaranties or bonds.

The administrator shall notify the applicant of the administrator's decision whether or not to submit the application to the board. If the administrator determines to submit the application to the board, the administrator shall submit copies of the application to the board for approval or rejection.

Subp. 4. **Appeal of administrator's determination.** If the administrator decides not to submit the application to the board for approval, the applicant may request the board to review the administrator's decision. The request must be made in writing and submitted to the chair. Upon request the board shall conduct a de novo review of the application pursuant to subpart 5.

Subp. 5. **Board review of application.** The board shall review the completed application pursuant to part 1580.0600, and may seek assistance from the administrator and the board's advisory committee, if one exists. The board may hire consultants or professionals who are reasonably required for an evaluation of the eligibility and feasibility of the project.

Subp. 6. **Approval and conditional commitment.** If the board approves an application, it may adopt a resolution that conditionally commits the state to guarantee the portion of the proposed loan or to issue bonds, not exceeding the limit in part 1580.0300, subpart 2. The commitment is not binding upon the state unless the board has executed on behalf of the state a final loan guarantee agreement or has issued bonds in conformity with parts 1580.0700 and 1580.0900.

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## PROPOSED RULES

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Subp. 7. **Denial of application.** If the application is not approved by the board, the administrator shall notify the applicant promptly in writing of the denial.

Subp. 8. **Application fee.** When the application is filed, the applicant shall pay a fee equal to 0.25 percent of the amount of the loan guarantee or loan from bond proceeds requested. The fee must be paid to the commissioner of finance. The board must charge against the fee its costs of processing, reviewing, and evaluating the application. The costs charged against the fee may include, as applicable, the direct and indirect cost of work performed by state employees, the expenses of the advisory committee, and the fees, charges, and expenses paid to consultants or professionals the board considers necessary and reasonably required for its determination of project feasibility and eligibility for a loan guarantee or loan from bond proceeds.

If the board denies an application, the remaining fee balance must be refunded to the applicant. If the board issues a commitment for the project, the remaining fee balance must be transferred from the general fund to the guaranty fund and credited against the amount of commitment fee required in part 1580.0700.

Subp. 9. **Misrepresentation in application.** Whenever a change occurs in the information provided by an applicant and borrower to the board or to the lender, the applicant and borrower shall immediately update and correct that information. Misrepresentation in the application or failure to update any required information shall constitute grounds to reject any application, revoke any notice of approval, and refuse to close any loan guaranty or issue bonds.

### 1580.0600 CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.

In determining whether to approve or deny an application for a loan guarantee or a loan from bond proceeds, the board shall consider the following criteria:

A. the extent to which the project will further the development of the state's agricultural resources and improve the market for its agricultural products;

B. the extent to which the public financial assistance sought by the applicant under the program would provide the project with an unfair advantage in competing with other products produced or processed in Minnesota;

C. the viability of the project, including economic and commercial feasibility, technical feasibility, financial projections, and managerial capability;

D. conformity of the project to environmental standards;

E. the qualifications and credit history of the owners, operators, and lenders;

F. the nature and extent of the security;

G. the degree of financial participation by private persons not supported by the loan guarantee or bonds;

H. the availability of the board's bonding authority, proceeds, and money from other sources to support the guarantee; and

I. the market conditions and terms required for the sale of any bonds or loan guarantee.

### 1580.0700 GENERAL TERMS AND CONDITIONS OF LOAN GUARANTEES.

The loan guarantee agreement between the state and the lender, and the loan agreement between the lender and the borrower must contain the following provisions, unless the board determines that the applicant has shown in writing that a required term or condition is not necessary to ensure the lender and the state of repayment according to the terms of the loan agreement in light of generally accepted commercial lending practices:

A. Payments of principal and interest made by the borrower under the loan must be applied by the lender to reduce the guaranteed and nonguaranteed portion of the loan on a proportionate basis, and the nonguaranteed portion may not in any event receive preferential treatment over the guaranteed portion.

B. A period of grace must be allowed of at least 60 days from the date a principal or interest payment is due, prior to the making of demand for payment pursuant to the loan guarantee, to permit adequate time for a decision by the board regarding principal and interest assistance under part 1580.0800. Payment as required by the loan guarantee must be made within 60 days of receipt by the board of a written demand complying with the terms and conditions of the guarantee.

C. The lender shall not accelerate a payment of the loan or exercise other remedies available to the lender if the borrower defaults, unless:

(1) the borrower fails to pay a required payment of principal or interest;

(2) the board consents in writing; or

(3) as otherwise permitted in the loan guarantee.

In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing

that the default has materially affected the rights or security of the board and lender, and the board finds that the lender should be entitled to receive payment pursuant to the loan guarantee.

D. If a payment of principal or interest is made by the board upon default of the borrower, the board is subrogated to the rights of the lender with respect to payment.

E. The borrower shall have promptly prepared and delivered to the board annual audited or reviewed financial statements of the project prepared by a certified public accountant according to generally accepted accounting principles.

F. Duly authorized representatives of the board must have access to the project site at reasonable times during construction and operation of the project.

G. The borrower shall maintain adequate records and documents concerning the construction and operation of the project in order that representatives of the board may determine its technical and financial conditions and its compliance with environmental requirements. The records shall include the amounts of all sales and use taxes paid on personal property and services purchased for the construction and operation of the project, with tax receipts furnished by the sellers or other supporting documentation determined by the board to be satisfactory. The amounts of those taxes must be reported to the board in the manner and at the times required by the board.

H. The borrower shall protect and preserve at all times the project assets and other collateral securing the loan and shall assist in liquidation of collateral to minimize loss in the event of default.

I. Orderly liquidation of assets of the project must be provided for in the event of default, with an option on the part of the board to acquire from the lender the lender's interest in the assets pursuant to the nonguaranteed portion of the loan.

J. The board must be paid at or before the closing of the guaranteed loan a fee or fees for the loan guarantee or the commitment to guarantee the loan. The aggregate fee must be one percent of the total principal amount of the guaranteed portion of the loan.

K. The lender shall perfect and maintain the mortgage lien on the real estate and the security interest in all personal property and collateral granted as security for the loan, and shall cause all other loan servicing functions to be performed that are normally required or performed by a reasonable and prudent lender with respect to a loan without a guarantee.

L. The lender must notify the board in writing without delay of:

- (1) the date, amount of, and use for each disbursement of loan proceeds;
- (2) any loan payments that are two weeks overdue;
- (3) any failure to honor a commitment by any person of an intended source of capital for the project; and
- (4) any significant adverse changes from original cash flow projections as evidenced by reports from the borrower, or any other known evidence that the borrower might be unable to meet a future scheduled payment of principal or interest.

M. The board or the lender may determine that the loan is in default when:

- (1) scheduled payments are 60 days past due;
- (2) the borrower is or may become unable to meet in full the principal or interest payments, or both, that are due or to become due within a specified period; or
- (3) the board and the lender mutually determine and agree that the project is no longer viable and financially feasible.

N. The borrower must be required to establish a reserve, from the proceeds of the loan or otherwise, to be maintained with the lender or with a trustee for the holders of the borrower's obligations, with a letter of credit, or in cash or securities of a specified market value at least one-half of the annual amount that would be required to amortize the entire amount of the loan over the term (or at the rate of yield resulting from the interest rates) provided in the loan agreement.

O. The lender must service the loan and receive the payments of principal and interest. In the event of default, the lender must continue to service the loan if requested by the board to do so. Upon written approval of the administrator, the lender may sell or transfer the loan or loan servicing functions.

P. The agreement shall contain other terms and conditions that the board determines necessary and appropriate to carry out the purposes of Minnesota Statutes, chapter 41A.

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## PROPOSED RULES

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### 1580.0800 PRINCIPAL AND INTEREST ASSISTANCE.

Subpart 1. **Availability of assistance.** The board may at any time enter into a written contract with the borrower to pay the lender, an amount not greater than the amount of principal and interest to become due on one or more subsequent dates, without acceleration, if the board determines that:

- A. the borrower is not more than 60 days overdue in payments of principal or interest due;
- B. the borrower is or may become unable to meet in full principal or interest payments, or both, that are due or to become due within a specified period;
- C. it is in the public interest to permit the borrower to continue to pursue the purposes of the project;
- D. the probable net financial loss to the board will be less than that which would result in the event of a default;
- E. the borrower is obligated by the contract to reimburse the state for the principal or interest advanced thereunder, with interest on those amounts, upon terms and conditions satisfactory to the board in light of generally accepted commercial lending practices; and
- F. adequate funds are available to make the principal and interest payments pursuant to Minnesota Statutes, section 41A.03, subdivision 4.

Subp. 2. **Terms of assistance.** All sums advanced for principal and interest assistance and interest on those amounts must be secured by the best available collateral and security interest granted by the loan agreement, but none of the advances made thereafter be repaid to the board until and unless all principal and interest currently due on the loan has been fully paid. In the event of subsequent default by the borrower, acceleration by the lender, and payment by the board of the full amount due under the loan guarantee or bonds, the board is subrogated to the rights of the lender with respect to the principal paid by it under the contract. Upon payment of the loan in full, with accrued interest, the remaining amount of the advances and interest on the advances may be paid to the board.

### 1580.0900 ISSUANCE OF BONDS.

Subpart 1. **Bond resolution.** If the board intends to fund the eligible financial assistance by issuing bonds for a project pursuant to Minnesota Statutes, section 41A.05, subdivision 2, the board shall first pass a preliminary resolution. The preliminary resolution must not obligate the board to issue bonds or to fund eligible financial assistance, but must constitute an expression of current intention of the board to issue bonds or to fund eligible financial assistance. If the board subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant or borrower, market conditions, availability of bond issuance authority, and other conditions that the board considers necessary, and the board decides in conformance with Minnesota Statutes, section 41A.01, and in accordance with generally accepted commercial lending practices to make eligible financial assistance available, the board shall pass a final resolution that authorizes the issuance and sale of bonds to extend eligible financial assistance to the project. The final resolution must specify the terms and conditions under which bonds will be issued. The preliminary resolution may contain a time limit with respect to issuance of bonds, may be revoked or amended by the board at any time before the final resolution of the board without liability to the board, and may impose any conditions or requirements that the board considers desirable. The administrator shall notify the applicant of the board's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the board does not extend financial assistance, the board has no liability to the applicant or borrower.

Subp. 2. **Bond reserve.** If the board determines, in light of market conditions, that a bond reserve fund is necessary to provide additional security for the bonds, then it must require the borrower to establish a reserve for the bonds. The reserve may come out of bond proceeds, in order to provide the additional security for the bonds as market conditions may require. The amount of the reserve must not be less than one-half of the annual amount that would be required to amortize the entire amount of the bonds over the term and at the interest rate (or at the rate of yield resulting from the interest rates) provided in the bond issue resolution.

## Department of Energy and Economic Development

### Proposed Permanent Rules Relating to Technology Product Investment Program

#### Notice of Proposed Adoption of Rules without a Public Hearing

Notice is hereby given that the Minnesota Energy and Economic Development Authority (hereinafter the "Authority") proposes to adopt the above-entitled rules without a public hearing following the procedures set forth in Minnesota Statutes, Sections 14.29 to 14.36. The specific statutory authority to adopt these rules is Minnesota Statute 116.M.08, Subdivision 4. The proposed rules were published at *State Register*, Volume 10, #50, on pages 2466-2471 [10 SR 2466].

Persons interested in these rules shall have 30 days, until 4:30 p.m. on July 9, 1986, in which to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. Any written material received by the agency by July 9, 1986 will become part of the record in this matter.

Any person may make a written request for a public hearing on the rule within this 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed. If a public hearing is required, the Authority will proceed pursuant to Minnesota Statutes, Sections 14.131 to 14.20.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Rosemary T. Fruehling, Director  
Office of Software Technology Development  
Department of Energy and Economic Development  
900 American Center Building  
150 East Kellogg Boulevard  
St. Paul, MN 55101  
(612) 297-1554

The proposed rules may be modified if the modifications are supported by data and views and do not result in substantial change in the proposed rules as noticed.

The rules proposed for adoption relate to the Technology Product Investment Program, a program for financial assistance to software, courseware and other technology-related products. The rules establish eligibility criteria, application content and procedures, default provisions and submission and evaluation criteria for technology product investments. A "Statement of Need and Reasonableness" that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Dr. Fruehling upon request. Also, a free copy of the *proposed* rules is available by contacting Dr. Fruehling at the above address.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General or those who wish to receive a copy of the *adopted* rules may submit a written request to Dr. Fruehling.

9 June 1986

Mark B. Dayton, Chairman  
Minnesota Energy and Economic  
Development Authority

### **Rules as Proposed (all new material)**

#### **8300.4101 DEFINITIONS.**

Subpart 1. **Scope.** For the purpose of parts 8300.4102 to 8300.4112, the following terms have the meanings given them.

Subp. 2. **Product rights.** "Product rights" means a product to which the rights have been acquired by the authority through purchase, lease, license, or loan default.

Subp. 3. **Conceptual product.** "Conceptual product" means an idea based upon a mental impression or general notion that can be documented in a technology-related product design or plan.

Subp. 4. **Courseware.** "Courseware" means specialized software for the delivery of education and training.

Subp. 5. **Default.** "Default" means the failure of the loan recipient to repay the principal and interest, to make royalty payments in accordance with the security agreement, or the breach by the loan recipient for more than ten days after mailing written notice of breach by the commissioner of any material covenant in the note, loan agreement, or in any instrument securing the loan which the commissioner determines constitutes an adverse change in the loan recipient's ability to repay the product loan. For purposes of these

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## PROPOSED RULES

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parts, a loan is considered in default if the principal and interest repayments and royalty payments are not received by the authority within ten days after the day specified in the security agreement.

Subp. 6. **Derivative product.** "Derivative product" means a product that contains or uses part of a previous product.

Subp. 7. **Education.** "Education" means the deliberate process of developing knowledge, mind, and character of an individual.

Subp. 8. **Product.** "Product" means something produced by a business and that exists in a usable form. Product includes, but is not limited to, a technology-related product, a conceptual product, or a prototype product, and all technical and user documentation, drawings, prototypes, models, test results, and source codes associated with the product.

Subp. 9. **Product loan.** "Product loan" means a loan made to a business for the development and for marketing of a product.

Subp. 10. **Prototype product.** "Prototype product" means a working model that approximates the function of a final technology-related product.

Subp. 11. **Royalty.** "Royalty" means the proceeds paid to the authority in connection with the loan agreement or in connection with product rights. Payments can be based on but not limited to a percent of sales of the product or a specific dollar amount for each unit of the product sold.

Subp. 12. **Software.** "Software" means a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result, in any form of material object in which such statements or instructions may be fixed, by any method now known or hereafter developed, regardless of whether the statements or instructions are capable of being perceived by or communicated to humans. Software includes courseware.

Subp. 13. **Technology-related product.** "Technology-related product" means a product that results from a method or process for handling a specific technical problem. Technology-related product includes computer software and computer hardware products.

Subp. 14. **Training.** "Training" means the process which instructs so as to make a person proficient or qualified.

### 8300.4102 TECHNOLOGY PRODUCT LOAN PROGRAM.

Subpart 1. **Purpose.** The authority shall make technology product loans to eligible applicants in compliance with Minnesota Statutes, chapter 116M in order to help create or retain jobs for the state. The authority shall also consider the value of the product to promote the public good of the state, especially in education and training. Loans may be made to eligible applicants for the development and marketing of technology-related products that exist as completed products, prototypes, or as conceptual products.

Subp. 2. **Use of loan proceeds.** The loan must be made to provide financial assistance for the development and marketing of a technology-related product. Proceeds of the loan may be used to pay the costs of computer and other technology-related equipment, and for working capital.

Subp. 3. **Size of loan.** The principal amount of any product loan issued by the authority may not exceed \$250,000 for technology-related equipment and for working capital for any one product, provided, however, the authority may make an additional loan not to exceed \$100,000 for the same product if the applicant can demonstrate that the additional loan is necessary to develop and market the product as described in the loan agreement or to modify the development and marketing plans if the authority determines that such modifications are necessary. Proceeds of the loan must be issued to the eligible applicant in accordance with an approved plan and timetable. The plan must establish significant events in the development and marketing activities of the product which, when determined by the authority to be complete, shall serve as an indicator to release subsequent loan proceeds in accordance with the plan and timetable.

Subp. 4. **Maximum term.** The maximum term of the loan may not exceed four years.

Subp. 5. **Interest rate.** The interest rate of a loan is five percentage points below a full faith and credit obligation of the United States government of comparable maturity, as of five working days before closing, or as determined by the authority at the time of approval based upon its assessment of current interest rate conditions.

Subp. 6. **Security requirements.** In addition to security interests in collateral as specified in part 8300.3012, the authority shall require a security interest in the product in the form of a royalty on the product and, in case of default, full rights to the product, including all patents, copyrights, mask work, trade secrets, trademarks, service marks, and any other intellectual property rights. The royalty payment must be based upon net receipts of the product not to exceed 25 percent and must be set forth in a security agreement that shall be entered into at the same time the loan is made. Royalty payments must be made to the authority in accordance with the schedule appearing in the security agreement.

The security agreement must set forth the terms and conditions applicable to all derivatives of the product, and must bind all future assignees of the product. The amount of royalty paid to the authority shall be set forth in the security agreement. Royalty terms provided in the security agreement may not extend more than seven years from the date of the loan agreement unless the authority and the eligible applicant agree to an extension. The maximum amount of royalty paid to the authority shall not exceed three times the

amount of the loan principal. The security agreement must contain a provision for assignment of all product rights, including copyrights and patents to the authority upon default of the loan.

Subp. 7. **Loan servicing.** The commissioner shall be the authority's authorized agent for purposes of administration of the loan including approval of required documentation prior to disbursement, the determination of a default, and the exercise of remedies upon default. The commissioner shall monitor the repayment of the principal and interest as provided in the amortization schedule. The commissioner may restructure the loan at the request of the borrower or upon his or her own initiative if the commissioner determines that restructuring the loan will increase the probability that the loan will be repaid to the state.

If the borrower requests the commissioner to restructure the loan, the commissioner shall charge the borrower a fee in the amount of one-half percent on the outstanding principal amount of the loan.

Subp. 8. **Loan payments; royalties.** Loan payments must be made as provided in the amortization schedule. The first principal payment is due 12 months after issuance of the final proceeds of the loan.

The authority, in its sole discretion, may accept royalty payments in lieu of loan payments if it appears that this arrangement will increase the probability that the loan will be repaid. The amount of royalty paid in lieu of loan payments may not reduce the total amount of royalty due.

#### **8300.4103 ELIGIBLE LOAN APPLICANTS.**

A person, partnership, firm, or corporation engaged in and determined by the authority to constitute a small business as defined in the regulations of the United States Small Business Administration, Code of Federal Regulations, title 13, part 121, standard industrial code (SIC) 7372, is considered an eligible small business or an eligible applicant for a technology product loan.

#### **8300.4104 FINANCING ELIGIBLE SMALL BUSINESSES AND TARGETED SMALL BUSINESSES.**

The authority may use funds available for product loans to help finance eligible small businesses. Two-thirds of these available funds must be allocated to help finance targeted small businesses.

The authority shall make a determination as to the use of funds four months prior to the close of its fiscal year. At that time the authority may reallocate its remaining funds between the categories of eligible small businesses and targeted small businesses if it determines that by doing so participation in the program may increase.

#### **8300.4105 LOAN DEFAULT.**

If the commissioner determines the loan to be in default, the commissioner may take such actions provided in law or in equity to protect its interests. Upon default, the commissioner shall notify the loan recipient in writing of the default and give the loan recipient 60 days to re-establish the good standing of the loan. During this time period the commissioner may permit the borrower to sell or reassign the product rights or licenses, prepare derivative products, or undertake other measures that will increase the probability that remaining loan payments will be made. If the loan remains in default at the end of the initial 60-day time period, the commissioner may extend the time period for an additional 60 days if the loan recipient can demonstrate that the additional period of time is necessary to re-establish the good standing of the loan. If the loan remains in default at the end of the initial 60-day time period and any granted extension, all product rights as provided in the security agreement transfer automatically to the authority. The loan recipient shall also provide to the commissioner, if requested, all relevant materials including technical and user documentation, drawings, prototypes, models, test results, and source codes associated with the product.

#### **8300.4106 DISPOSITION OF ACQUIRED PRODUCTS.**

Subpart 1. **Sales.** For product rights acquired under loan default, the authority may sell the acquired product and all intellectual property rights incident to in a commercially reasonable manner to any person or business.

Subp. 2. **No product warranty.** No warranty may be expressed or implied by the authority for products distributed under subpart 1. Product recipients shall assume all risk of use. The state, the authority, and its employees may not be held liable for any damages, including any lost profits, lost savings, or other incidental or consequential damages arising out of the use or inability to use the product.

#### **8300.4107 CERTIFICATIONS.**

For products financed by the authority, the eligible loan recipient shall agree to and execute a certification statement acceptable in form and content to the commissioner. This statement must certify at least the following:

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## PROPOSED RULES

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- A. that the product is original;
- B. that the product does not infringe upon copyrights, patents, mask work, trade secrets, trademarks, service marks, and any other intellectual product rights;
- C. that the product will substantially perform the tasks it has represented in its documentation that it will perform;
- D. that the loan recipient will hold the authority harmless.

### **8300.4108 DATA, PUBLIC AND PRIVATE.**

An applicant shall execute an acknowledgement that data provided as part of the application or loan servicing process may be considered public data. If the eligible applicant considers any part of the data to be provided to the authority to be a trade secret, and if the authority agrees that the data is a trade secret as defined in the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13, then the authority shall enter into an agreement with the eligible applicant regarding the data.

### **8300.4109 CONTENT OF APPLICATION.**

In addition to the data required by part 8300.3011, an applicant for the technology product investment program shall provide the following information:

- A. specific product descriptions and comparison data to similar or related products, projected life cycle of the product, need for the product, pricing considerations, profit margins, and future product trends;
- B. market research data including a description of the targeted audience that will use and purchase the product; how the product will be packaged, promoted, and sold, including pricing considerations;
- C. a market plan describing primary strategies, distribution agreements, if any, and opportunities for leverage with other products;
- D. a product packaging, documentation, and manufacturing plan including projected cost of product and inventory levels;
- E. product descriptions, sales, and profit data on other technology products under the control of the business;
- F. projected financial performance of the proposed product including sales and profit projections and cash flow and return on investment analysis;
- G. jobs maintained or created as a result of the loan; and
- H. a description of how the product will serve the public good of the state, especially in education and training.

### **8300.4110 SUBMISSION AND EVALUATION CRITERIA.**

Subpart 1. **Evaluation criteria.** The authority shall evaluate an application according to the standards and requirements in parts 8300.4101 to 8300.4112, the laws governing the program, and the following criteria:

- A. the number of jobs created and maintained;
- B. the ability of the product to attract private investment capital;
- C. the projected financial success of the product;
- D. the probability that royalty projections will be realized;
- E. the projected return on investment to the state;
- F. the degree to which the product serves the public good and reduces other state expenses; and
- G. the degree to which the product can be expected to meet the needs of the marketplace.

Subp. 2. **Use of consultants.** The authority shall evaluate applications using the evaluation criteria. The commissioner may employ consultants as needed to extend the expertise of staff. The commissioner shall take steps that are reasonable to ensure that consultants are free from any conflicts of interests and that they use reasonable means to protect confidentiality of data.

Subp. 3. **Priority funding.** The commissioner may make priority funding recommendations to the authority based on the evaluation of the applications.

### **8300.4111 INTELLECTUAL PROPERTY RIGHTS.**

Copyrights, patents, mask work, trade secrets, trademarks, service marks, and any other intellectual property rights in the product shall remain with the business unless specifically transferred to the authority under a mutual agreement or through loan default.

### **8300.4112 DERIVATIVE PRODUCTS AND SUCCESSOR BUSINESSES.**

All agreements made as part of the technology product investment program, including product loan and security agreements, must

contain an appropriate clause to maintain and secure the authority's financial interests in derivative products and successor businesses.

## Department of Human Rights

### Proposed Rules Relating to Discrimination Complaints

#### Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, § 14.14, subdivision 1, in the above-entitled matter in the Hubert H. Humphrey Institute, Auditorium, 301 19th Avenue South, Minneapolis, Minnesota on July 17, 1986, commencing at 9:00 a.m. and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing. The proposed rules may be modified as a result of the hearing process, therefore, all interested parties are encouraged to attend.

Following the Department's presentation at the hearing, all interested or affected parties will have an opportunity to participate by asking questions and making comments. Statements may be made orally and written material may be submitted. In addition, whether or not appearance is made at the hearing, written statements or material may be submitted to Peter C. Erickson, Administrative Law Judge, Office of Administrative Hearings, 4th floor Summit Bank Building, 310 Fourth Avenue South, Minneapolis, 55415, Telephone (612) 341-7606 before the hearing or within five working days after the hearing ends. This comment period may be extended for a longer period, not to exceed 20 calendar days, if ordered by the Administrative Law Judge at the hearing.

The rule hearing procedure is governed by Minnesota Statutes, §§ 14.14 to 14.20, and by Minnesota Rules, part 1400. Questions about the hearing procedure may be directed to the Administrative Law Judge at the Office of Administrative Hearings.

The adoption of the rules is authorized by Minnesota Statutes § 363.05 subd. 1 (8), which gives the commissioner power to adopt suitable rules and regulations for the purpose of effectuating the statute. A copy of the proposed rules is attached to this notice and at least one free copy may be obtained by writing or calling:

David Nelson  
Minnesota Department of Human Rights  
500 Bremer Tower  
7th Place and Minnesota Street  
St. Paul, MN 55101  
(612) 296-5678

Additional copies of the Rules will be available at the door on the date of the hearing.

Notice is hereby given that a Statement of Need and Reasonableness is available for review at the Department and will be available 25 days prior to the hearing at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all evidence and argument which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may also be obtained from the Office of Administrative Hearings at a minimal charge.

The Administrative Law Judge will allow the Department and other interested persons three working days after the close of the hearing record to respond in writing to any new information submitted. During the three day period, the Department may indicate in writing whether there are any amendments suggested by other persons which the Department is willing to adopt. Additional evidence may not be submitted during the three day period. The written responses shall be added to the rulemaking record.

NOTICE: Any person may request notification of the date on which the administrative law judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

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# PROPOSED RULES

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after s/he commences lobbying. A lobbyist is defined in Minnesota Statutes, § 10A.01, subdivision 11, as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his/her own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250, not including his/her own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to:

Ethical Practices Board  
41 State Office Building  
St. Paul, Minnesota 55155  
Telephone: (612) 296-5616

## Rules as Proposed

### 5000.0050 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 5000.0050 to 5000.2400, all terms defined in Minnesota Statutes, section 363.01, have the meanings given to them there. All other terms have the meanings given to them in this part.

Subp. 2. Act. "Act" means the Minnesota Human Rights Act, as defined in Minnesota Statutes, chapter 363.

Subp. 3. Administrative appeal of no probable cause determination. "Administrative appeal of no probable cause determination" means the charging party's request that the commissioner reconsider a determination of no probable cause and the process by which the request is considered.

Subp. 4. Administrative appeal of probable cause determination. "Administrative appeal of probable cause determination" means a respondent's request that the commissioner reconsider a determination of probable cause and the process by which the request is considered.

Subp. 5. Answer to a charge. "Answer to a charge" means the respondent's initial written reply to a charge that contains information sufficient to explain the respondent's defense.

Subp. 6. Commissioner. "Commissioner" means the commissioner of human rights or an agent authorized by the commissioner of human rights to perform specific tasks or responsibilities.

Subp. 7. Complaint. "Complaint" means a document issued by the commissioner pursuant to Minnesota Statutes, section 363.06 alleging that a respondent has engaged in or is engaging in an unfair discriminatory practice.

Subp. 8. EEOC. "EEOC" means the United States Equal Employment Opportunity Commission.

Subp. 9. HUD. "HUD" means the United States Department of Housing and Urban Development.

Subp. 10. State. "State" means state of Minnesota.

Subp. 11. Statement of grievance. "Statement of grievance" means written information received by the department that may become a charge of discrimination as defined in parts 5000.0050 and 5000.0400 but that lacks one or more of the required elements described in parts 5000.0050 and 5000.0400.

Subp. 12. Verified charge. "Verified charge" means a written statement signed under oath or affirmation, filed by any person including the commissioner, containing a statement of allegation that a person may have engaged or may be engaging in an unfair discriminatory practice.

Subp. 13. Party. "Party" means a charging party, a complainant, or a respondent.

### 5000.0300 DUE PROCESS RIGHTS DEPARTMENT PROCEDURE.

Subpart 1. Due process rights. No person before the department of Human Rights shall have his or her rights, privileges, or duties determined without regard for fundamental fairness. Any A person may be represented by legal counsel at any stage of proceedings before the department. In any contested case before the department, all parties thereto shall be provided with an adequate notice of hearing, fair hearing, and an objective decision supported by substantial evidence.

Subp. 2. Computation of time. Unless otherwise specified, a period of time prescribed or allowed by parts 5000.0050 to 5000.0900 is computed in accordance with rule 6 of the Minnesota Rules of Civil Procedure and Minnesota Statutes sections 45.14, 645.15, and 645.151.

**5000.0400 CHARGES.**

Subpart 1. **Content.** A verified charge shall contain:

- A. the name and address of the person filing the charge;
- B. the name and address of the person against whom the charge is filed;
- C. a clear and concise statement of the facts ~~which~~ that, in the judgment of the person filing the charge, may constitute the alleged unfair discriminatory practice;
- D. the signature under oath or affirmation of the person filing the charge; and
- E. any other information required by the commissioner.

Subp. 1a. **Who may file.** A person who claims to be aggrieved by an unfair discriminatory practice may file a charge with the department. The charge of an allegedly aggrieved minor or ward must be filed by a parent or guardian.

Subp. 1b. **Time for filing.** A charge must be filed within 300 days of an alleged unfair discriminatory practice. Filing is accomplished by delivery of the charge to the department's office on or before the 300th day. Time is computed under Minnesota Statutes, sections 645.15 and 645.151.

Subp. 2. **Filing.** Notwithstanding the provisions of part 5000.0100, subpart 7 and subpart 4 of this part subparts 1 and 1b and part 5000.0050, subparts 12 and 13, a charge is deemed considered filed when the department receives from a person making a charge a written statement sufficiently precise to identify the parties and describe generally the action or practices complained of as follows: If the department receives a written grievance alleging a discriminatory practice within 245 days after the occurrence of the practice, the grievance must be perfected into a verified charge by the 300th day after the occurrence or it will not be considered filed with the department. A statement of grievance received by the department between the 246th and 300th days, inclusive, following the occurrence of the alleged discriminatory practice will be considered filed as of the date of its receipt if it becomes a verified charge within 30 days of the department's mailing of a perfected charge to the person filing the charge.

Subp. 2a. **Cross-filing with other agencies.** A charge filed with the department that alleges violation of antidiscrimination laws administered by EEOC or HUD will automatically be filed by the department with the EEOC or HUD.

A charge filed with EEOC or HUD may be referred to the department. The charge is considered filed on the date the department receives from the federal agency sufficient material for a charge to be considered filed under part 5000.0400.

Subp. 3. **Service.** A copy of the charge shall be served by the commissioner upon a respondent either by personal delivery or by ~~registered or~~ certified mail within five days after it has been filed with the department.

Subp. 4. **Withdrawal.** A charge may be withdrawn at any time before a complaint is issued by the commissioner.

Subp. 5. **Amended charges.** A charge may be amended:

- A. to cure technical defects or omissions;
- B. to allege additional facts if they relate to or grow out of the facts alleged in the original charge;
- C. to add, remove, or change a party; or
- D. if the purposes of the act will be served thereby.

Subp. 6. **Supplemental information.** It is the continuing responsibility of a charging party to provide the department with written information sufficient to allow it to communicate with him or her by phone or in writing during the pendency of a charge or any complaint issued thereto. If a charging party fails to comply with this requirement, the commissioner may terminate any proceedings related to that charge; provided, however, that 30 days ~~prior to said~~ before the termination the commissioner shall direct a notice of the intention to so act to the charging party by mailing a certified letter to the charging party's last known address.

**5000.0500 INVESTIGATION AND DISCOVERY.**

Subpart 1. ~~Written replies~~ **Answer to charge.** ~~Any~~ A person against whom a charge has been filed may submit to the commissioner ~~a written reply an~~ an answer to the charge. ~~Such~~ The reply may contain a statement of the respondent's position and may present any evidence related to the subject matter of the charge.

Subp. 2. **Testimony Statement.** The commissioner may by interview or deposition take the ~~testimony~~ statement of any person;

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including a party, relating to the subject matter of a charge or a complaint. The ~~attendance~~ appearance of witnesses may be compelled by the use of subpoena as provided in the act.

Subp. 3. **Production and inspection of documents.** The commissioner may order any person, including a party, to produce and permit the inspection and copying or photographing of any designated documents, papers, books, accounts, letters, photographs, or other tangible things, not privileged, which may constitute or contain evidence relating to the subject matter of a charge or a complaint. The production of any matter heretofore enumerated may be compelled by the use of subpoena as provided in the act.

Subp. 4. **Written interrogatories.** The commissioner may order any party to complete written interrogatories relating to the subject matter of a charge or complaint. ~~Such~~ The written interrogatories shall be completed and returned to the commissioner within 15 days of receipt ~~thereof~~ of them. For good cause, the commissioner may grant an extension of time for the completion and return of the written interrogatories.

Subp. 5. **Confidentiality.** The commissioner shall not disclose any information obtained during investigation or discovery except as permitted by ~~parts 5000.0700, 5000.0800, and 5000.1600~~ Minnesota Statutes, sections 363.06, subdivision 6 and 363.061.

### 5000.0510 FACT FINDING CONFERENCE.

Subpart 1. Call. The commissioner may call a conference to obtain information needed to investigate an allegation in a charge. At the conference, the parties may attempt to resolve the proceedings before a determination is made.

Subp. 2. Attendance; subpoenas; tape recording. The commissioner may require the attendance of a person at the conference by subpoena. The commissioner may restrict the attendance of others. Both the commissioner and a party may make an audio tape recording of the conference. On request of a party, while a charge is pending, the commissioner shall duplicate the audio recording. The commissioner shall charge a fee to cover the cost of duplication.

### 5000.0520 TERMINATION OF PROCEEDINGS.

The commissioner may choose not to process:

- A. a moot charge;
- B. a charge which the commissioner believes does not warrant further use of department resources; or
- C. a statement of grievance which does not conform to part 5000.0400, subpart 2.

### 5000.0530 DISMISSAL OF FRIVOLOUS CHARGES.

The commissioner may dismiss a charge the commissioner believes is:

- A. illogical, fantastic, or incoherent;
- B. negated by common knowledge which the commissioner takes official notice of;
- C. brought by a charging party acting in bad faith; or
- D. substantially the same as a previous charge in which no probable cause was found and involves the same charging party but a different respondent.

### 5000.0540 DISMISSAL FOR FAILURE TO PROVIDE REQUIRED INFORMATION.

Subpart 1. When. The commissioner may dismiss a charge or a statement of grievance for failure to provide required information when:

- A. the statement of grievance does not conform to part 5000.0400;
- B. the information about a charge that the commissioner has is insufficient to make a determination and the charging party fails to provide information which the charging party claims to have or can obtain that may substantiate an allegation;
- C. the charging party fails to provide information essential to a charge that requires amending;
- D. the charging party indicates to the commissioner an intent to bring a private civil action but fails to proceed either as required by part 5000.0550 or Minnesota Statutes, section 363.14, subdivision 1, clause (c); or
- E. the charging party does not comply with part 5000.0400, subpart 2.

Subp. 2. Procedure. If informal means of obtaining the information fail, the commissioner shall notify the charging party by certified and first class mail of the need for the required information and the possibility of dismissal of the charge for failure to provide required information. If the information is not provided within 30 days of the date of notice, the commissioner may dismiss the charge.

### 5000.0550 PRIVATE CIVIL ACTION; NOTICE TO DEPARTMENT.

When a person who has filed a verified charge as provided in part 5000.0400 indicates to the commissioner an intent to bring a

private civil action in the matter pursuant to Minnesota Statutes, section 363.14, subdivision 1, clause (c), the commissioner shall suspend processing of the charge and request the charging party to execute, within 30 days, either:

A. a statement of withdrawal signed by the charging party or attorney of record declaring that a private action will be commenced within 90 days of the initial notice; or

B. a request to resume processing the case to a disposition consistent with other provisions of the statute and parts 5000.0050 to 5000.2400.

If neither is received within 30 days of delivery of the request to the charging party, the commissioner may process the case as consistent with the provisions of the act and parts 5000.0050 to 5000.2400.

A copy of a summons and complaint served upon the respondent, whether submitted to the commissioner by the charging party, the respondent, or obtained from the clerk of the court in which it was filed, shall be sufficient to permit the commissioner to terminate all proceedings in the department relating to the charge.

#### **5000.0560 NOTICE OF DISMISSAL.**

The commissioner shall issue an order dismissing a charge when it falls outside the jurisdiction of the act or when it is dismissed pursuant to the act and parts 5000.0050 to 5000.2400. Written notice dismissing a charge shall be sent by certified and first class mail to the charging party and to the respondent within ten days of the dismissal. Notification to the charging party shall include notice of the right to bring a civil action relating to the charge within 45 days of a dismissal pursuant to part 5000.0520, 5000.0530, or 5000.0540.

#### **5000.0570 REOPENING CERTAIN CASES.**

Subpart 1. Request. A charging party may request that proceedings terminated according to part 5000.0400, subpart 6, 5000.0520, 5000.0530, or 5000.0540 be reopened. The request must be in writing and must state a reason for reopening.

Subp. 2. Respondent; notice to; information from. The commissioner shall promptly notify the respondent by certified mail of the request. The respondent has ten days from the receipt of the notice to provide the commissioner with pertinent information in writing on reopening the proceedings.

Subp. 3. Considerations. In deciding whether to reopen proceedings, the commissioner shall consider whether:

A. the order of dismissal was affected by fraud, mistake, or misconception of fact;

B. the commissioner was less than reasonably diligent in trying to locate the charging party or in obtaining information from the charging party;

C. reopening would result in undue prejudice to the respondent; or

D. justice requires that the matter be reopened.

Subp. 4. Reopening without request. After determining that the department clearly erred in closing a proceeding, the commissioner may reopen the proceedings without a request. The department shall provide notice of its intent to reopen to the charging party and respondent and allow ten days for the respondent to reply.

Subp. 5. Notice of decision. The commissioner shall, within 30 days of the respondent's receipt of notice, notify the parties in writing of the decision.

#### **5000.0580 DETERMINATION OF UNFAIR DISCRIMINATORY PRACTICES.**

Subpart 1. Notice of determination of no probable cause. The commissioner shall issue an order dismissing a charge or portion of a charge when the commissioner has determined after investigating the allegations of the charge that there is no probable cause to believe that the respondent has engaged in the alleged unfair discriminatory practice. A copy of the order dismissing a charge or portion of a charge following a no probable cause determination shall be served by certified and first class mail upon the charging party and by first class mail upon the respondent within ten days of the determination. The order shall become final unless a request for administrative appeal of the no probable cause determination is taken as provided in part 5000.0700.

Subp. 2. Notice of determination of probable cause and conciliation. If the commissioner has determined after investigating the allegations of a charge that there is probable cause to believe that the respondent has engaged in an unfair discriminatory practice, the commissioner may attempt to eliminate the practice by conciliation in accordance with the act and parts 5000.0050 to 5000.0800.

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The notice shall be served on the respondent by certified and first class mail and on the charging party and the counsel of any party by first class mail.

### **5000.0700 ADMINISTRATIVE APPEAL OF NO PROBABLE CAUSE DETERMINATION.**

Subpart 1. **Service of notice of appeal request for reconsideration.** A charging party against whom a determination of no probable cause has been made may appeal such determination to a review board by serving a written notice of appeal upon the commissioner and the respondent by hand delivery or by mail within 15 days after service of an order dismissing a charge may request reconsideration of a determination of no probable cause by serving a written notice of request for reconsideration upon the commissioner and the respondent by hand delivery or by mail postmarked within ten calendar days after service of the determination notice.

Subp. 2. **Receipt of notice Acknowledgment of request.** The commissioner shall acknowledge in writing the receipt of a timely notice of appeal and shall forward a copy of such notice to the chairperson of the Department of Human Rights to the charging party and respondent by first class mail the receipt of a timely notice requesting reconsideration.

Subp. 3. to 7. [See Repealer.]

Subp. 8. **Basis for reconsideration.** A request for reconsideration shall contain or identify and describe the relevance of one or more of the following:

- A. new evidence that was not originally considered;
- B. evidence that was available in the investigation but not properly weighed in reaching the determination; or
- C. statutory or case law indicating that the determination is erroneous.

Subp. 9. **Review of request.** The commissioner shall review or shall designate one or more qualified persons to review the record of investigation and the evidence and argument presented with the request. The review shall be conducted within 20 days of the department's receipt of the request. Following review the commissioner shall either:

- A. affirm the determination of no probable cause;
- B. reverse the determination of no probable cause; or
- C. vacate the determination of no probable cause and remand the case for further investigation on its merits and issuance of a new determination.

Subp. 10. **Notice of decision.** Within ten days of the review of the request for reconsideration, the commissioner shall notify the charging party and the respondent of the decision made on the request. This decision shall be issued to the charging party and the respondent in the form on an order that states the decision and indicates the basis on which it was made. This notice shall be served on the charging party by certified mail.

Subp. 11. **Effect of decision.** The rights of the parties remain as they were before the decision on the request for reconsideration, except that a redetermination of no probable cause will not be reconsidered by the commissioner.

### **5000.0750 ADMINISTRATIVE APPEAL OF PROBABLE CAUSE DETERMINATION.**

Subpart 1. **Basis for reconsideration.** A respondent may request reconsideration of a probable cause determination by submitting to the commissioner a written statement that contains or identifies:

- A. evidence that was not available during the investigation;
- B. statutes or case law that may invalidate the probable cause determination; or
- C. substantial information indicating that the evidence relied on for the determination was falsified, inaccurate, or erroneously weighed.

Subp. 2. **Acknowledgment of request.** The commissioner shall, within ten days of receipt of the request, notify the respondent by first class mail of the receipt of the request and state whether the request is sufficiently substantial to warrant further consideration.

Subp. 3. **Action on request.** If the request warrants reconsideration of the determination of probable cause, the commissioner shall reconsider the determination and either:

- A. affirm the determination of probable cause;
- B. reverse the determination; or
- C. vacate the determination of probable cause and remand the case for further inquiry on its merits and issuance of a new determination.

The commissioner may refer a request for reconsideration to a person or panel designated pursuant to part 5000.0700, subpart 4.

Subp. 4. Notice of decision. When the commissioner has determined that action shall be taken on a request for reconsideration pursuant to subpart 3, notice of the decision shall be served upon the respondent by first class mail. A copy of this notice and of the reconsideration request shall be provided to the charging party by first class mail if the determination of probable cause is affirmed, and by certified mail if the determination is reversed or vacated.

Subp. 5. Effect of decision. A decision shall have the effect described in items A to D.

A. If the determination of probable cause is not reversed or vacated, the rights of the parties remain as they were prior to the decision.

B. If the determination of probable cause is reversed, the charging party has the right to request reconsideration by administrative appeal under part 5000.0700.

C. If the determination of probable cause is vacated and a subsequent determination of no probable cause is issued, the charging party has the right to request reconsideration under part 5000.0700.

D. If the determination of probable cause is vacated and a subsequent determination of probable cause is issued, that determination will not be reconsidered except on the initiative of the commissioner.

#### **5000.0800 CONCILIATION AND SETTLEMENT.**

Subpart 1. **Invitation to conciliation.** When the commissioner has determined after investigation that there is probable cause to believe that the respondent has engaged in an unfair discriminatory practice, the commissioner shall serve upon the respondent by ~~registered or~~ certified mail a written notice of ~~such the~~ determination and a written invitation to participate in a conciliation conference for the purpose of attempting to eliminate the unfair discriminatory practice by informal means. ~~Such The~~ invitation shall set a ten-day limitation on the time in which the respondent shall respond to the invitation. For good cause the commissioner may grant an extension of time.

Subp. 2. **Termination of conciliation.** If a respondent fails or refuses to respond to the commissioner's invitation to participate in a conciliation conference, or if the respondent fails or refuses to make a good faith effort to conciliate, the commissioner ~~shall may~~ terminate attempts to conciliate the matter and ~~shall may~~ issue a complaint in accordance with the act and parts ~~5000.0100~~ 5000.0050 to 5000.3300 5000.2400. Conciliation efforts may be resumed at any time upon written request of the commissioner to the respondent.

Subp. 3. **Settlement agreements.** The commissioner and a respondent may at any time enter into an agreement or stipulation to conciliate, settle, or compromise the subject matter of a charge or a complaint. ~~Such The~~ agreement or stipulation may provide for the commissioner to waive the right to proceed against the respondent under the act and for the respondent to take such affirmative actions as may effectuate the purpose of the act. ~~Such The~~ affirmative actions may include, but are not limited to, the payment of money damages, the hiring, reinstatement, or upgrading of an aggrieved person, or the sale or lease of real property. Any agreement entered into by the commissioner and the respondent shall be reduced to writing and ~~shall be is~~ enforceable in the same manner as a final decision of the department. ~~A panel or An~~ administrative law judge may issue an order embodying the terms of any agreement or stipulation entered into by the commissioner and a respondent. ~~Such The~~ order ~~shall be is~~ enforceable as a final decision of the department.

Subp. 3a. Monitoring agreements. The commissioner shall monitor all settlement and conciliation agreements requiring specific performance. If the commissioner believes a respondent may not have complied with an agreement, the commissioner shall notify the respondent by certified mail. The notice shall specify the part of the agreement the respondent is believed to have violated. After permitting the respondent 15 days after the receipt of the notice to respond, the commissioner may commence investigation of the respondent's possible noncompliance with the agreement. If noncompliance is determined, the commissioner may commence proceedings to enforce the agreement.

Subp. 4. **Confidentiality.** The commissioner shall not disclose any information concerning efforts to eliminate an unfair discriminatory practice by way of conciliation, except as provided by Minnesota Statutes, sections 363.06, subdivision 6, and 363.061.

#### **5000.0900 COMPLAINT.**

Subpart 1. **When issued.** The commissioner ~~shall may~~ issue a complaint: when the commissioner has determined that there is probable cause to believe that a person has engaged or is engaging in an unfair discriminatory practice and after attempts to eliminate

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the unfair discriminatory practice by conciliation have been terminated; or when the commissioner has reason to believe that a person is engaging in an unfair discriminatory practice.

Subp. 2. **Content.** A complaint shall contain: the name and address of the complainant; the name of the respondent; the relief sought and the grounds therefore; and the signature of the complainant.

Subp. 3. **Service and filing.** A complaint, notice, and order for hearing shall be served upon a respondent by ~~registered or certified~~ mail and filed with a ~~panel or an~~ administrative law judge at least ten days before the date of the hearing ~~on the complaint as provided by Minnesota Statutes, section 363.06, subdivision 4, paragraph (3), and part 1400.5600.~~

Subp. 4. **Amendments.** The commissioner may amend a complaint at any time.

### 5000.1100 CLASS ACTION SUITS.

Subpart 1. **Prerequisites.** With the permission of the charging party, the commissioner may sue on behalf of a class only if: there are questions of law or fact common to the class, and the claims of members of the class are of sufficient similarity that a fair hearing of them is possible in a class action, and the commissioner will fairly and adequately protect the interests of the class, and one of the following three conditions exists:

A. the prosecution of separate actions by the commissioner on behalf of individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

B. the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate relief that includes final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

C. the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: the interest of members of the class in individually affecting the prosecution of separate actions; the extent and nature of any litigation concerning the controversy already commenced by members of the class; the desirability or undesirability of concentrating the litigation of the claims in the administrative hearing; the difficulties likely to be encountered in the management of a class action.

Subp. 2. **Decision to maintain as class action.** After an action is brought as a class action, the ~~panel or~~ administrative law judge shall determine by order whether it is to be so maintained. At the discretion of the ~~panel or~~ administrative law judge, ~~such the~~ order may be a part of the final order issued in accordance with Minnesota Statutes, section 363.071. If the order is not part of the final order, it may be conditional and may be amended or altered before the decision on the merits.

Subp. 3. **Notice to members.** In any class action, ~~prior to before~~ the hearing, the ~~panel or~~ administrative law judge shall direct to the members or potential members of the class the best notice practicable under the circumstances. Notice shall be reasonably certain to inform those affected, or, where conditions do not reasonably permit ~~such the~~ notice, the form of notice shall not be substantially less likely to give notice than other of the feasible and customary substitutes. If the complaint seeks compensatory relief, the notice shall advise each member: he or she will be excluded from the class, with respect to monetary relief, if he or she so requests by a specified date, and the decision, whether favorable or not, will include all members who do not request exclusion.

Subp. 4. **Conduct of class action.** In the conduct of class actions, the ~~panel or~~ administrative law judge may make appropriate orders: determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; requiring a specific type of notice or other protections for the members of the class or for the fair conduct of the action; dealing with other procedural matters. The orders may be altered or amended as may be desirable from time to time, and they are not final decisions of the department.

Subp. 5. **Required approval.** A class action shall not be dismissed or compromised without the approval of the ~~panel or~~ administrative law judge. Notice of the proposed dismissal or compromise shall be given to all members of the class in ~~such a~~ manner as the panel or administrative law judge directs.

Subp. 6. **Order.** In a class action, the order issued in accordance with Minnesota Statutes, section 363.071, whether or not favorable to the class, shall include and describe those persons who are members of the class. This order is a final decision of the department and is subject to judicial review.

### 5000.1200 ANSWER TO A COMPLAINT.

A respondent shall serve an answer upon the ~~department commissioner~~ within 20 days after service of the complaint. The original answer, together with an attached affidavit of service, shall be filed with the ~~panel or~~ administrative law judge. Failure to answer the complaint shall be deemed an admission of the allegations ~~therein in the complaint~~. A respondent may amend an answer at any time.

**5000.2000 DECISION OF HEARING PANEL OR ADMINISTRATIVE LAW JUDGE.**

Subpart 1. **On the record.** No factual information or evidence not part of the record shall be considered by the ~~panel of~~ administrative law judge in deciding a case.

Subp. 2. **Issuance of final order.** At the conclusion of a hearing held pursuant to Minnesota Statutes, section 363.071 and upon consideration of the record, the ~~panel of~~ administrative law judge shall decide the case by issuing an order in accordance with Minnesota Statutes, section 363.071. ~~Such~~ The order shall be supported by written findings of fact and conclusions of law, which may be supplemented by a written memorandum. ~~Such~~ The order shall be a final decision of the department and shall be appealable in accordance with ~~the provisions of~~ Minnesota Statutes, section 363.072 and part 5000.2100.

Subp. 3. **Service.** Findings of fact, conclusions of law, orders, and memoranda issued pursuant to Minnesota Statutes, section 363.071 shall be served in accordance with the provisions of that section. All other decisions and orders shall be served on the parties by ~~registered or~~ certified mail.

**5000.2100 DISTRICT COURT REVIEW.**

Any person aggrieved by a final decision of the department reached after a hearing held pursuant to Minnesota Statutes, section 363.071 and rendered in accordance with part 5000.2000 may seek judicial review pursuant to Minnesota Statutes, sections 14.63 to 14.68.

**5000.2200 POLICY LETTERS.**

The commissioner may issue a letter setting forth the policy with respect to a provision or provisions of the act. A policy letter may be issued upon the request of any interested person or upon the commissioner's own initiative.

A request for a policy letter shall be in writing and shall contain: the name and address of the person making the request and of other interested persons, if any; a statement of all known relevant facts; a statement of reasons why the policy letter should be issued; and the signature of the person making the request.

**5000.2250 PRESERVATION OF RECORDS.**

Subpart 1. While charge pending. A respondent notified of a charge shall retain all documents related to the charge that are under its control. The documents must be retained until the commissioner notifies the respondent that the charge has been resolved.

Subp. 2. During monitoring period. The commissioner may require as part of a conciliation or settlement agreement that the respondent retain documents related to a charge for a period of time specified in the agreement.

Subp. 3. Retention of records. An employer, employment agency, labor organization, or an operator of an apprenticeship or other training program subject to the act must retain all applicant and employment records for one year after the records are made.

**5000.2300 SEVERABILITY.**

If any provision of parts ~~5000.0400~~ 5000.0050 to ~~5000.3300~~ 5000.2400 is held invalid, the invalidity does not affect any provision of these rules which can be given effect without the invalid provision and to this end the provisions of these ~~rules~~ parts are severable.

**5000.2400 CONSTRUCTION.**

Parts ~~5000.0400~~ 5000.0050 to ~~5000.3300~~ 5000.2400 shall be construed liberally to effectuate the purposes of the act.

**REPEALER.** Minnesota Rules, parts 5000.0200; 5000.0600; 5000.0700, subparts 3, 4, 5, 6, and 7; 5000.1000; 5000.1300; 5000.1400; 5000.1500; 5000.1600; 5000.1700; 5000.1800; and 5000.1900 are repealed.

## Board of Veterinary Medicine

### Proposed Rules Relating to Fees

#### Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Board of Veterinary Medicine (hereinafter "Board") proposes to adopt the above-entitled rules without a public hearing. The Board has determined that the proposed changes will be noncontroversial in nature pursuant to Minn. Stat. § 16A.128 and has elected to follow the procedures set forth in Minn. Stat. § 14.21-14.28.

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## PROPOSED RULES

Interested persons shall have 30 days to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule being addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

PLEASE NOTE THAT NO PUBLIC HEARING WILL BE HELD ON THESE RULES unless 20 percent of the persons required to pay these fees submit to the agency during the 30-day comment period, a written request for a public hearing on the proposed rule. Minn. Stat. § 16A.128, subd. 2.a.

Persons who wish to submit comments should submit such comments or requests to:

Glen Nelson  
Minnesota Board of Veterinary Medicine  
2700 University Avenue West  
St. Paul, Minnesota 55114  
Telephone: (612) 642-0597

The statutory authority of the Board to make the proposed rule changes is contained in Minn. Stat. §§ 16A.128, 156.01, subd. 1, and 214.06.

If adopted, the proposed rules would set the fees for admission to examination, licensure, renewal of license and late fees.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed changes and identifies the data and information relied upon to support the proposed changes has been prepared and is also available from the Department free upon request.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies. In accordance with Minn. Stat. § 14.115, the Department's consideration of any such effect on small business will be addressed in the Statement of Need and Reasonableness. Persons representing small businesses are invited to participate in the rulemaking process.

Upon adoption of the final rules without a public hearing, the proposed changes, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial changes. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Glen Nelson.

21 May 1986

Glen Nelson  
Executive Director

### Rules as Proposed

#### 9100.0400 APPLICATION FEES TO PRACTICE VETERINARY MEDICINE.

Subpart 1. **Amount.** ~~Every~~ A person applying for a license to practice veterinary medicine in this state shall submit to the Board of Veterinary Medicine a fee of ~~\$100~~ \$185 in the form of a check or money order payable to the state treasurer. The application fee received shall support only the application with which the fee was submitted. ~~Any~~ A person who applies more than once shall submit the full application fee with each subsequent application.

Subp. 2. [Unchanged.]

#### 9100.0500 RENEWAL FEE.

Subpart 1. [Unchanged.]

Subp. 2. **Amount.** The annual fee for licensure renewal ~~shall be \$40~~ is \$30 and ~~shall~~ must be paid to the executive secretary of the board on or before March 1 of each year. By January 1 of the year for which the renewal fee is due, the board will issue a renewal application to each current licensee to the last address maintained in the board file. Failure to receive ~~such~~ this notice ~~shall~~ does not relieve the licensee of ~~his~~ the obligation to pay renewal fees in such a manner that they are received by the board on or before the renewal date of March 1.

Subp. 3. [Unchanged.]

Subp. 4. **Late penalty.** An ~~application~~ applicant for renewal shall pay a late penalty of ~~\$10~~ \$20 as well as the renewal fee if the application for renewal is received after March 1 of the current year. A renewed license issued after March 1 of any year ~~shall be~~ is valid only until March 1 of the next succeeding year regardless of when the renewal fee is received.

Subp. 5. [Unchanged.]

# ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

## Department of Health

### Adopted Temporary Rules Relating to Review of Care and Classification of Residents in Facilities Participating in the Medical Assistance Program

The rules proposed and published at *State Register*, Volume 10, Number 40, pages 2011-2016, March 31, 1986 (10 S.R. 2011) are adopted with the following modifications:

#### Rules as Adopted, Temporary

##### 4656.0010 [Temporary] SCOPE.

Parts 4656.0010 to 4656.0100 [Temporary] establish procedures to review the appropriateness of care and services furnished to residents of facilities participating in the medical assistance program, and for the assessment and classification of residents of nursing homes and boarding care homes participating in the medical assistance program to determine the operating cost payment rates for all nursing homes and boarding care homes participating in the medical assistance program under Minnesota Statutes, sections 256B.41 to 256B.48 and parts 9549.0050 to 9549.0059 [Temporary].

##### 4656.0040 [Temporary] PROCEDURES FOR ASSESSMENTS.

When performing assessments in accordance with part 4656.0030 [Temporary], team reviewers shall follow the assessment procedures and requirements established in the Inspection of Care Instruction Manual: with Procedures for Completing Case Mix Requests for Classifications. The ~~March 17~~ May, 1986, version of the manual, excluding the attachments, is incorporated by reference. This manual is available at the Ford Law Library, 117 University Avenue, Saint Paul, Minnesota 55155 and through the minitex interlibrary loan system. This material is not subject to frequent change.

##### 4656.0080 [Temporary] REVIEW AND CLASSIFICATION OF FACILITY AND PREADMISSION SCREENING ASSESSMENTS.

Subpart 1. **Assessment procedures.** Assessments which are performed in accordance with part 9549.0059 [Temporary] must be completed by following the assessment procedures and requirements established in the ~~March 17~~ May, 1986, version of the Facility Manual for Completing Case Mix Requests for Classification. This manual, excluding the attachments, is incorporated by reference and is available at the Ford Law Library, 117 University Avenue, Saint Paul, Minnesota 55155 and through the minitex interlibrary loan system. This material is not subject to frequent change.

Subp. 3. **Notification of classification.** Within 15 working days of receiving a complete and accurate request for classification, the department shall mail a written notice of the resident's classification to the resident and the resident's nursing home or boarding care home. The written notice must specify that the resident or the resident's authorized representative and the nursing home or boarding care home have the right to review the Department of Health's documents supporting the classification and the right to request a reconsideration of the classification.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

# EMERGENCY RULES

## Proposed Emergency Rules

According to Minn. Stat. of 1984, §§ 14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

- 1) that a free copy of the proposed emergency rule is available upon request from the agency;
- 2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
- 3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
- 4) that the emergency rule may be modified if the data and views submitted support such modification.

## Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§ 14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

## Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

# MINNESOTA RULES AMENDMENTS AND ADDITIONS

## HUMAN SERVICES DEPARTMENT

9549.0050-.0059 (adopted temporary) ..... 2482

## Department of Human Services

### Adopted Temporary Rules Relating to Nursing Home Payment Rate Determination

The rules proposed and published at *State Register*, Volume 10, Number 40, pages 2016-2033, March 31, 1986 (10 S.R. 2016) and Volume 10, Number 41, page 2089, April 7, 1986 (10 S.R. 2089) are adopted with the following modifications:

#### Rules as Adopted [Temporary]

#### 9549.0055 [Temporary] DETERMINATION OF THE OPERATING COST ADJUSTMENT FACTORS AND LIMITS.

Subp. 2. **Base year limits.** For each geographic group established in part 9549.0052 [Temporary] the base year operating costs limits must be determined according to items A to E. No redetermination of the base year operating costs limits shall be made due to audit adjustments or appeal settlement.

E. The other operating costs limits must be determined in accordance with subitems (1) to (5). For the purpose of establishing operating costs limits, the commissioner shall compute the allowable historical other operating costs per diems for the base year by dividing the allowable historical other operating costs by the greater of resident days or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period. An exception to this calculation is made for a short length of stay facility. For a short length of stay facility, the allowable historical other operating costs must be divided by the greater of resident days or 80 percent of the number of licensed beds multiplied by the number of days in the reporting period.

(2) The other operating cost limit for hospital attached nursing homes in each geographic group in part 9549.0052 [Temporary] must be 105 percent of the median of the array of the allowable historical other operating cost per ~~diem~~ diems for each nursing home in the group established under subitem (1) in the base year.

#### 9549.0056 [Temporary] DETERMINATION OF THE OPERATING COST PAYMENT RATE.

Subp. 4. **Adjusted prospective other operating cost payment rate.** The adjusted prospective other operating cost payment rate must be determined according to items A to E.

A. Except as provided in item B, if the nursing home's nonadjusted other operating cost payment rate is below the limit for that group established in part 9549.0055 [Temporary], subpart 2, item E, as indexed in part 9549.0055 [Temporary], subpart 3, the nursing home's adjusted prospective other operating cost payment rate must be the nonadjusted other operating cost payment rate

determined in subpart 3, item A, multiplied by the other operating cost adjustment factor determined in part 9549.0055 [Temporary], subpart 1, item B, plus an efficiency incentive equal to the difference between the limit in part 9549.0055 [Temporary], subpart 2, item E, as indexed in part 9549.0055 [Temporary], subpart 3, and the nonadjusted other operating cost payment rate in subpart 3, item A, up to a maximum of two dollars per resident day.

B. For any short length of stay facility and any nursing home licensed on May 1, 1983, by the commissioner to provide residential services for the physically handicapped under parts 9570.2000 to 9570.3600 that is under the limits established in part 9549.0055 [Temporary], subpart 2, item E, subitem (3), the nursing home's adjusted prospective other operating cost payment rate must be the nonadjusted other operating cost payment rate determined in subpart 3, item A, multiplied by the other operating cost adjustment factor determined in part 9549.0055 [Temporary], subpart 1, item B, plus an efficiency incentive equal to the difference between the limit in part 9549.0055 [Temporary], subpart 2, item E, subitem (2) as indexed in part 9549.0055 [Temporary], subpart 3, ~~item A,~~ and the nonadjusted other operating cost payment rate in subpart 3, up to a maximum of two dollars.

Subp. 6. **One-time adjustment.** Items A to F set forth the procedure to be applied to establish a one-time adjustment to the nursing home's case mix operating costs per diem for the period October 1, 1986, to September 30, 1987.

D. If the request meets the criteria in item C, the commissioner shall make a one-time adjustment to the nursing home's payment rate. The one-time adjustment must be determined according to subitems (1) to (9) and must not exceed the amount computed in subitem (3).

(1) The nursing home's productive nursing hours per standardized resident day for the reporting period ending September 30, 1985, must be subtracted from 0.95 and the result must be multiplied by the nursing home's standardized resident days for the period beginning October 1, 1984, and ending September 30, 1985.

(6) Any efficiency incentive included in the nursing home's total operating ~~costs~~ cost payment on July 1, 1986, must be subtracted from the amounts in subitem (5).

#### **9549.0057 [Temporary] DETERMINATION OF THE INTERIM AND SETTLE-UP OPERATING COST PAYMENT RATES.**

Subp. 3. **Settle-up operating cost payment rate.** The settle-up total operating cost payment rate must be determined according to items A to E.

E. For the nine-month period following the settle-up reporting period, the total operating cost payment rate must be determined according to item B except that the efficiency incentive in part 9549.0056 [Temporary], subpart 4, item A or B, applies.

#### **9549.0059 [Temporary] RESIDENT ASSESSMENT.**

Subp. 4. **Change in classification due to annual assessment by Department of Health.** Any change in resident class due to an annual assessment by the Department of Health's QA&R team ~~will~~ must be effective as of the first day of the month following the date of completion of the Department of Health's assessments.

Subp. 5. **Assessment upon return to the nursing home from a hospital.** Residents returning to a nursing home after hospitalization must be assessed according to items A to C.

B. ~~In addition to the assessment required in item A,~~ residents who have returned to the same nursing home after hospital admission must be reassessed by the nursing home no less than 30 days and no more than 35 days after return from the hospital unless the nursing home's annual or semiannual reassessment occurs during the specified time period.

~~C.~~ A registered nurse shall perform the assessment on each resident according to QA&R procedures established by the Department of Health, including physical observation of the resident, review of the medical plan of care, and review of the resident's plan of care, and shall record the assessment on the assessment form. The registered nurse who performs the assessment shall sign the assessment form. Within five working days of the completion of the assessment, the nursing home must forward to the Department of Health a request for a classification for any resident assessed upon return to a nursing home after a hospital admission. This request must include the assessment form and the resident's medical plan of care. Upon request, the nursing home must furnish the Department of Health with additional information needed to determine a resident's classification.

~~D~~ C. Any change in resident class due to an assessment provided under item A must be effective on the date the resident returns to the nursing home from the hospital. ~~Any change in resident class due to a reassessment provided under item B must be effective as of the first day of the month following the assessment.~~

Subp. 6. **Change in resident class due to audits of assessments of nursing home residents.** Any change in resident class due to a reclassification required by part ~~4656.0050~~ 4656.0100 [Temporary] that results in a payment increase for the resident must be effective as of the first day of the month following the date of the Department of Health's classification. ~~Any change in resident class due to a reclassification required by part 4656.0050 [Temporary] that results in a payment decrease for the resident must be retroactive to the effective date of the assessment audited.~~

# OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

## Department of Energy and Economic Development Business Financial Management Division

### Notice of Tax Exempt Financing Issuance Authority

#### Notice of Availability

##### Pursuant to Minn. Laws 1986, Ch. 465, Article 1, Section 13

The Department gives notice that the amounts of tax exempt financing issuance authority available to qualified issuers as of June 2, 1986, is as follows:

#### Competitive Pool (Existing Law)

##### Pursuant to Minn. Laws 1986, Ch. 486, Article 1, Section 13

Total Pool Available (Priority to Manufacturing Projects) \$ 296,522,800.

For:

Pollution Control/Waste Management Projects \$ 54,064,560.

Commercial Redevelopment Projects \$ 95,312,980.

#### Competitive Pool (Federal Volume Limitation Act)

##### Pursuant to Minn. Laws 1986, Ch. 465, Article 1, Section 19

Total Pool Available (Priority to a-General Obligation Projects,  
b-Manufacturing Projects) \$ 287,841,237.

For:

Pollution Control/Waste Management Projects \$ 59,856,247.

Commercial Redevelopment/Multifamily Housing Projects \$ 101,008,432.

#### Qualified 501(c)(3) Bond Pool (Federal Volume Limitation Act)

##### Pursuant to Minn. Laws 1986, Ch. 465, Article 1, Section 20

Total Pool Available \$ 76,900,000.

Pursuant to Minn. Laws 1986, Ch. 465, Article 1, Section 13, Subd. 2, Section 19, Subd. 2, Section 20, Subd. 3, and Section 21, Subd. 2, issuers requesting allocations of issuance authority must submit applications, any applicable deposit and any other supporting documents required. Application forms are available from the Department upon request.

## Department of Finance

### Maximum Interest Rate for Municipal Obligations During June 1986

Pursuant to Minnesota Statutes, Section 475.55, Subdivision 4, Commissioner of Finance, Jay Kiedrowski, announced today that the maximum interest rate for municipal obligations in the month of June would be nine (9) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to ten (10) percent per annum.

20 May 1986

Peter Sausen, Assistant Commissioner  
Cash and Debt Management

## Department of Human Services Health Care Programs Division

### Notice of Changes in the Eligibility Requirements for Medical Assistance and General Assistance Medical Care

Notice is hereby given to recipients of Minnesota Medical Assistance (MA) and General Assistance Medical Care (GAMC) and to the public, of changes in the eligibility requirements for MA and GAMC. This notice is being published pursuant to federal regulations which govern the administration of the Medical Assistance program, 42 CFR 447.205 (1985). This notice is being published to inform the public of changes made in Minnesota Medical Assistance and General Assistance Medical Care by the Minnesota Legislature as found in Laws of Minnesota First Special Session, Chapter 1, Article 8, Section 5. The following changes eliminate the 20% Federal Benefit Disregard (FBD) which disregards part of a recipient's Retirement, Survivors, Disability Insurance (RSDI), Veteran's Administration benefits (VA), or Railroad Retirement income (RR) and eliminate the 15 day period provided to recipients to reduce excess assets.

Information on implementation of these requirements will be sent as necessary to local welfare agencies via instructional and informational bulletins and mailed to MA and GAMC recipients with the medical records. Copies of this material may be reviewed at the local county welfare or social service agency.

Written comments and questions may be addressed to:

Health Care Programs Division  
Administration Policy Unit  
First Floor, Space Center Building  
444 Lafayette Road  
St. Paul, Minnesota 55101

Comments and suggestions from the public may be viewed at the above address during normal working hours.

Estimated cost savings are the total state, federal and county dollars anticipated to be saved for the period July 1, 1986 through June 30, 1987. Medical Assistance costs are apportioned as follows:

FY '87	53.4%	Federal
	41.93%	State
	4.66%	County

General Assistance Medical Care costs are apportioned as follows:

FY '87	90.00%	State
	10.00%	County

#### I. Elimination of Federal Benefit Disregard (FBD)

The 1986 legislature has decided to eliminate the 20% disregard in order to avoid threatened federal sanction. There is no federal regulation allowing for a 20% disregard of RSDI, VA, or RR income. The elimination of the disregard means that some MA and GAMC applicants/recipients will no longer qualify for MA or may have to pay for a portion of their medical bills.

The FBD disregard will be eliminated effective July 1, 1986.

Estimated cost savings to Medical Assistance and General Assistance Medical Care: FY '87 \$5,000,000

#### II. Elimination of Reduction of Excess Assets Policy

Amendment to Minnesota Statutes, Section 256B.06, sub. 1(13) effective July 1, 1976, provide that MA/GAMC recipients will no longer be allowed 15 days to take steps to reduce assets in excess of the \$3,000/\$6,000 limit for MA and \$1,000 limit for GAMC.

This change is required by the U.S. Department of Health and Human Services—Health Care Financing Administration (HCFA) and an Eighth Circuit Court of Appeals decision [State of Minnesota v. Margaret Heckler, 779 F.2d 1335 (8th Cir. 1985)] which states that eligibility for MA cannot exist when assets exceed the allowable limits.

The change in statute will allow an individual or family to accrue interest on allowable assets as long as assets are reduced to the maximum allowable amount at the time eligibility is redetermined. Residents of long term care facilities will also be able to accumulate the monthly clothing and personal needs allowance (\$40) as long as assets are reduced to the allowable limit at the time of eligibility redetermination.

Estimated cost savings to Medical Assistance and General Assistance Medical Care is insignificant.

**Department of Human Services, Community Social Services  
Division**

**Outside Opinion Sought Concerning Rules Governing the Allocation of Title IV-E Funds  
to Counties**

Notice is hereby given that the Minnesota Department of Human Services is seeking information or opinions from sources outside the agency in preparing to draft a rule governing the allocation of Title IV-E funds to counties. Authorization for the rule is found in Minnesota Statutes, sections 393.07, subdivision 2; 256.01 subdivision 2 (2); and 256.011.

The Minnesota Department of Human Services requests information and comments concerning the subject matter of this proposed rule. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Jane Delage  
Rules Unit  
Minnesota Department of Human Services  
4th Floor, Centennial Office Building  
658 Cedar St.  
St. Paul, MN 55155

Oral statements and comments will be received during regular business hours over the telephone at 612/297-4302.

All statements of information and comment shall be accepted until further notice. Any written material received by the Minnesota Department of Human Services shall become part of the record in the event the rule is promulgated.

**Minnesota Pollution Control Agency**

**Notice for Request for Qualifications (RFQ) and Current Fee Structure**

The Minnesota Pollution Control Agency (MPCA) wishes to develop a list of contractors that are capable of providing emergency treatment of municipal water supplies within the State of Minnesota that have been contaminated with volatile organic compounds. Contracts would be executed using emergency contracting procedures on a case by case basis. Funding for treatment services will come from the State Superfund and be apportioned out on a site by site basis. It is estimated that \$250,000 worth of emergency treatment services will be needed over a 24 month period.

Copies of the RFQ are available from:

Bruce Brott  
Minnesota Pollution Control Agency  
Solid and Hazardous Waste Division  
1935 West County Road B2  
Roseville, Minnesota 55113

All statements of qualifications and current fee structures must be submitted to the MPCA by Friday, July 11 or 25 days from the date of first publication of this notice, whichever is later.

**Public Employees Retirement Association (PERA)**

**Comments Sought in Preparation of Proposed Rules Interpreting, Defining, and  
Clarifying Certain Statutory Language Governing Police Officer Eligibility for  
Membership in the PERA Police and Fire Fund**

Notice is hereby given that the Public Employees Retirement Association (PERA) is seeking comments from sources outside the agency in advance of the preparation of proposed rules interpreting, defining, and clarifying the "power to arrest by warrant" language of Minnesota Statutes, Section 353.64, subdivision 2, which, in part, sets forth criteria governing eligibility of police and/or other law enforcement officers for membership in the PERA Police and Fire Fund. Statutory authority to adopt, alter, and enforce reasonable rules consistent with the laws of the State for the administration and management of the fund is granted by Minnesota Statutes, Section 353.03.

PERA intends to propose rules with respect to the above cited statutory language to preclude inconsistent or non-uniform interpretations that result in inequitable and uneven treatment of similarly situated individuals in terms of eligibility for membership in the PERA Police and Fire Fund.

PERA requests written statements containing comments, views, or data on this matter from interested or affected individuals or groups. Such written statements should be addressed to:

Allen Eldridge  
Public Employees Retirement Association  
Suite 200—Skyway Level  
514 St. Peter Street  
St. Paul, MN 55102  
Phone: (612) 297-3570

All written statements shall be accepted through June 30, 1986. All written statements received by PERA shall become part of the rule-making record in the event that rules are adopted.

James M. Hacking, Executive Director  
Public Employees Retirement Association

## Office of the Secretary of State

### Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612)296-2805. Application deadline is July 1, 1986.

**Board of Electricity** has 2 vacancies open for licensed alarm and communications system contractors. The board licenses electricians and inspects all new electrical wiring. Members are appointed by the Governor. Members must file with the Electrical Practices Board. Meetings once each month at 1821 University Ave., St. Paul. Members receive \$35 per diem plus expenses. For specific information contact the Board of Electricity, Griggs Midway Bldg., Room N191 University Ave., St. Paul 55104; (612)297-2111.

**Intergovernmental Information Systems Advisory Council** has 1 vacancy open for member representing a city of the 4th class. The council assists local governments in developing automated information systems by awarding grants. Members are appointed by the Commissioner of Administration. For specific information contact the Intergovernmental Information Systems Advisory Council, Centennial Office Bldg., 5th Floor, 658 Cedar St., St. Paul 55155; (612)297-2172.

**Small Business Procurement Advisory Council** has 4 vacancies open for members. The council advises the Commissioner of Administration on the small business procurement program, reviews complaints from vendors and reviews compliance reports. Members are appointed by the Commissioner of Administration. Members receive no compensation. For specific information contact the Small Business Procurement Advisory Council, 122 Administration Bldg., St. Paul 55155; (612)297-4412.

**Charitable Gambling Control Board** has 4 vacancies open for members. The board shall regulate legal forms of gambling to prevent their commercialization, to ensure integrity of operations and to provide for the use of net profits only for lawful purposes. Members must have been residents of Minnesota for at least five years. Not more than six members may belong to the same political party. At least four members must reside outside of the seven county metropolitan area. Members are appointed by the Governor. Members receive \$35 per diem plus expenses. Members must file with the Ethical Practices Board. For specific information contact the Charitable Gambling Control Board, 1821 University Ave., Room N-475, St. Paul 55104-3383; (612)642-0555.

**Governor's Job Training Council—State Programs Committee** has 5 vacancies open for members. The committee shall recommend policies, develop fund utilization strategies and review and recommend projects for funding consideration for Job Training Partnership Act programs. Members are appointed by the Commissioner of Jobs and Training. Members receive expenses only. For specific information contact the Governor's Job Training Council—State Programs Committee, 690 American Center Bldg., 150 E. Kellogg Blvd., St. Paul 55101; (612)296-8008.

**Governor's Job Training Council—Planning and Evaluation Committee** has 5 vacancies open for members. The committee shall review the plans and operations of State and local systems providing employment, training and related services, including Job

## OFFICIAL NOTICES

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Training Partnership Act, Job Service and Vocational Education and provide comments and recommendations to the Governor's Job Training Council on the relevancy, effectiveness and coordination of such systems in the state. Members are appointed by the Commissioner of Jobs and Training. Members receive expenses only. For specific information contact the Governor's Job Training Council—Planning and Evaluation Committee, 690 American Center Bldg., 150 E. Kellogg Blvd., St. Paul 55101; (612)296-8008.

**Governor's Job Training Council—Unemployment Insurance Committee** has 5 vacancies open for members. The committee shall review existing statutory provisions, economic assumptions and fund projections to determine the need for amending the unemployment insurance law. The primary objective will be the development of a policy which will provide for fund solvency, tax equity and benefit fairness. Members are appointed by the Commissioner of Jobs and Training. Members receive expenses only. For specific information contact the Governor's Job Training Council—Unemployment Insurance Committee, 690 American Center Bldg., 150 E. Kellogg Blvd., St. Paul 55101; (612)296-8008.

**Governor's Job Training Council—Job Service/Employment Committee** has 5 vacancies open for members. The committee shall recommend policies, procedures or marketing strategies that will improve overall knowledge and use of the Job Service by the State's employer community. Members are appointed by the Commissioner of Jobs and Training. Members receive expenses only. For specific information contact the Governor's Job Training Council—Job Service/Employment Committee, 690 American Center Bldg., 150 E. Kellogg Blvd., St. Paul 55101; (612)296-8008.

**Advisory Task Force to Develop a Public Corporation** has 15 vacancies open for members. To benefit from the experience of other states, four members shall be persons from outside the State of Minnesota. The task force shall draft a report for the Governor recommending a design, organization and suggested procedures for a public corporation, to be named the "Greater Minnesota Corporation" and to include as part of that report, draft legislation which could be considered by the 1987 Legislature. This report shall be submitted no later than November 15, 1986. Members are appointed by the Governor. Members receive expenses only. For specific information contact the Advisory Task Force to Develop a Public Corporation, State Planning Agency, Lani Kawamura, 100 Capitol Square Bldg., 550 Cedar St., St. Paul 55101; (612)297-2325.

**Medical Services Review Board** has 1 vacancy open for a professional (health care provider) alternate member. The board advises the department on medical matters relating to workers compensation and hears appeals on decisions of the department. Members are appointed by the Commissioner of Labor and Industry. Members receive \$35 per diem. Members must file with the Ethical Practices Board. For specific information contact the Medical Services Review Board, Dept. of Labor and Industry, Office of Public Affairs, 444 Lafayette Rd., St. Paul 55101; (612)297-4373.

**State Information Systems Advisory Council** has 8 vacancies open for members. The task force makes recommendations to the Commissioner of Administration on the state's computerization and information efforts. Members are typically equivalent of vice presidents of information services in large private sector organizations. The task force serves as a sounding board, provides information on techniques members have used within their organizations to address data processing issues, provides advice and evaluates alternative automation options presented by the state. Members are appointed by the Commissioner of Administration. Members receive no compensation. Monthly meetings or at the call of the chairman. For specific information contact the State Information Systems Advisory Task Force, 2nd Floor, Administration Bldg., 55 Sherburne St., St. Paul 55155; (612)296-8083.

**Minnesota Educational Computing Corporation** has 2 vacancies open for members knowledgeable about the use of computing in elementary, secondary, vocational education and public and private higher education or the business community. Members are appointed by the Governor for 4 years. Terms are staggered; members must file with the Ethical Practices Board. For specific information contact the Minnesota Educational Computing Corporation, 3490 Lexington Ave., Shoreview 55126; (612)481-3510.

**Board of the Minnesota School of the Arts and Resource Center** has 1 vacancy open for a public member. The board shall have the powers necessary for the care, management and control of the Minnesota School of the Arts and Resource Center. Members are appointed by the Governor with the advice and consent of the Senate. Members receive \$35 per diem plus expenses. A member may not serve more than two consecutive terms. For specific information contact the Board of the Minnesota School of the Arts and Resource Center, 514 St. Peter St., Suite 110, St. Paul 55102; (612)296-1319.

**Hazardous Waste Management Planning Council** has up to 18 vacancies open for members representing citizens, local government and industry. The council makes recommendations to the Waste Management Board on planning for and siting of hazardous waste processing and disposal facilities. Members are appointed by the Chairperson of the Waste Management Board. Meetings once monthly. Members are compensated for expenses. For specific information contact the Hazardous Waste Management Planning Council, 123 Thorson Bldg., 7323 58th Ave. N., Crystal 55428; (612)536-0816.

# STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

## Department of Administration—Procurement Division

### Contracts and Requisitions Open for Bid

Call 296-6152 for Referral to Specific Buyer

Commodity for Bid	Bid Closing Date at 2 pm	Department or Division	Delivery Point	Requisition #
Engine Oil Analysis	June 10, 1986	Transportation	Various	Price—Contract
Signs	June 10, 1986	Natural Resources	St. Paul	29-000-43718
Purchase of Apple Publishing System	June 10, 1986	Willmar Community College	Willmar	27-145-48995
Furnish & Install Roofing—Military	June 11, 1986	Military Affairs	Military	01-000-04580
Tank Storage	June 11, 1986	Transportation	Willmar	79-800-02897
Fish Toxicant	June 11, 1986	Natural Resources	Various	29-000-43834
Move Office	June 11, 1986	Minneapolis Community College	Minneapolis	27-151-47334
Replacement Parts for Juno Automated Equip.	June 11, 1986	Public Safety	St. Paul	07-700-36688
Modems & Multiplexors	June 11, 1986	Transportation	St. Paul	79-000-52724
All Terrain Vehicles	June 11, 1986	Natural Resources	Various	29-000-43835
Hewlett Packard Calculators	June 11, 1986	Transportation	St. Paul	79-000-52830
Automobiles & Trucks	June 12, 1986	Human Services Regional Treatment Center	Anoka	55-100-03531
Typewriters	June 12, 1986	Mankato State University	Mankato	26-071-16600
Evaluate Sewer System—Mn/DOT No. St. Paul	June 12, 1986	Transportation	North St. Paul	79-900-03183
Well Drilling	June 12, 1986	Transportation	St. Paul	79-050-18105
Laundry/Folder/Cross Folder	June 12, 1986	Human Services Regional Treatment Center	Faribault	55-303-11247
Snow Plow Truck Bracing & Cab Shields	June 12, 1986	Transportation	St. Paul	79-990-00001
CCTV—5 year lease	June 12, 1986	Correctional Facility	St. Cloud	78-830-08120
Disposal of Hazardous Waste Materials	June 12, 1986	Transportation	No. St. Paul	79-900-03150
Deka Phones	June 12, 1986	Various	Various	Price—Contract
Modular Office System Contract	June 13, 1986	Various	Various	Price—Contract
Rebid				
Guardrails, Barricades, Barriers	June 13, 1986	Transportation	No. St. Paul	79-900-03173
Purchase of Computer Upgrade Equip.	June 13, 1986	Human Rights	St. Paul	17-000-01839
Meat & Meat Products, Poultry & Poultry Products, Fish	June 13, 1986	Various	Various	Various-Variou
Rubbish Disposal—Inver Hills Community College	June 13, 1986	Community College System	Inver Hills	27-157-47586
00030 Time Books	June 13, 1986	Transportation	St. Paul	79-000-52802-8128

## STATE CONTRACTS

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### Department of Administration Printing and Mailing Services Division

#### Request for Proposals for Graphics Arts Design

The Minnesota Department of Administration, Printing and Mailing Services Division, is accepting bid proposals for Graphic Arts Design work. Those persons interested in receiving a detailed copy of the request for proposal may write to the address below or contact Geri Christen at 612-296-3277.

Minnesota Department of Administration  
Printing and Mailing Services Division  
117 University Avenue  
St. Paul, Minnesota 55155

About \$20,000 has been budgeted for this project. Proposals are due by 4:30 P.M., June 30, 1986.

## NON-STATE PUBLIC CONTRACTS

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The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector.

It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact the editor for further details.

### Metropolitan Council, Metropolitan Waste Control Commission and Regional Transit Board of the Twin Cities Area

#### Request for Proposals for Rental of Office Space

The Metropolitan Agencies desires proposals for the rental of up to approximately 88,000 usable square feet of office space in the city of St. Paul downtown area.

Responses must be received on or before 4:00 p.m. (C.D.S.T.) Friday, August 1, 1986. Questions and requests for copies of the Agencies RFP should be directed to:

James E. Barton  
Metropolitan Council  
Metro Square Building  
St. Paul, MN 55101  
(612) 291-6417

# TAX COURT

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Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

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## State of Minnesota Tax Court, Regular Division

Order Dated: 28 May 1986

Docket No. 4287 Wilson George Simon, Appellant, vs. Commissioner of Revenue, Appellee.

The above-entitled matter was heard by the Minnesota Tax Court, Judge M. Jean Stepan presiding, at the Hennepin County Government Center in Minneapolis, Minnesota, on December 13, 1985.

Randall D. B. Tigue, Attorney at Law, appeared on behalf of appellant.

Neil F. Scott, Special Assistant Attorney General, appeared on behalf of appellee.

Post trial briefs were submitted by both parties.

### SYLLABUS

On appeal from an assessment by the Commissioner of Revenue, the presumption that the assessment is correct is overcome by the introduction of substantial proof by the appellant and the Court will then make a determination based on the preponderance of the evidence, with the appellant bearing the burden of proof.

### FINDINGS OF FACT

1. This is an appeal from an Order of the Commissioner of Revenue dated January 16, 1985 assessing additional income tax against appellant for the 1984 tax year in the amount of \$8,760.34. The assessment was made pursuant to Minn. Stat. § 290.48, subd. 4, the so-called jeopardy assessment provision.

2. On March 22, 1984, Hennepin County Sheriff's Officers seized 40 ounces of hashish and 24 ounces of hashish oil from appellant's residence in Minneapolis, Minnesota. Based upon information received from the Hennepin County Sheriff's Office and the Bureau of Criminal Apprehension, appellee set the value of the hashish and hashish oil seized at \$65,888. Appellee concluded that appellant must have earned at least that much income in calendar year 1984 to have purchased hashish and hashish oil of the quantity seized by the Sheriff's Office. The assessment at issue was made based on that information.

3. Appellant was convicted in U.S. District Court of knowingly and intentionally possessing with intent to distribute hashish and hashish oil in violation of Title 21, U.S.C. § 841(a)(1), which conviction was filed on October 10, 1984. That conviction was affirmed on appeal to the 8th Circuit Court of Appeals.

4. On April 1, 1985, appellant timely filed a 1984 Minnesota income tax return. That return showed federal adjusted gross income in the amount of \$3,569.00. As a result of this low income and credits before tax, this return showed no income tax owed for the 1984 calendar year.

5. Appellant claims that he never had possession of any drugs and that the drugs found at his residence were planted there by law enforcement officers.

6. We find that appellant did have possession of the drugs seized from his residence.

7. Appellant did not have income in 1984 in the amount of \$65,888.

8. The attached Memorandum is hereby made a part of these Findings of Fact.

### CONCLUSIONS OF LAW

1. Appellant has overcome the presumption of validity of the Commissioner's assessment and the evidence presented supports a finding that appellant did not have income in 1984 in the amount claimed by the Commissioner.

2. The Order of the Commissioner of Revenue dated January 15, 1985 assessing additional income tax against appellant is hereby reversed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

28 May 1986

BY THE COURT,  
M. Jean Stepan, Judge  
Minnesota Tax Court

# DOCUMENTS DIVISION

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\* *Minnesota Laws 1985*. All laws passed in the Regular and Special Sessions. Code #18-3. \$37.00, plus \$2.22 tax.

\* *Minnesota Rules 1985*. 10-volume set. Code #18-200. Single volumes: \$13.00 plus 78¢ tax; Full set: \$125.00 plus \$7.50 tax.

\* *Minnesota Rules 1986 Supplement Number 1*. Code #18-200A. \$15.00 + 90¢ tax.

\* *Minnesota Statutes 1985 Supplement*. Pocket part supplement to Minnesota Statutes 1984. Code #18-7. \$25.00 plus \$1.50 tax.

*State Register Index*. Contains cumulative finding aids to Volume 9 of the *State Register*, including Minnesota Rules Amendments and Additions, Executive Orders list & index, Agency & Subject Matter indices. Code #13-9 SR INDEX. \$5.00.

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*State Register*. Minnesota's official weekly publication for agency rules and notices, executive orders of the Governor, state contracts, Supreme Court Calendar, Supreme Court and Tax Court Decisions. Annual subscription \$130; Trial Subscription (13 weeks) \$40.00; Single copies \$3.25.

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*State Register Binder*. Durable 3½ inches, forest green binders imprinted with the *State Register* logo. \$6.50 plus 39¢ tax.

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